

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1157 Session of  
1997

INTRODUCED BY WENGER, HART, GREENLEAF, MADIGAN, SALVATORE,  
LEMOND, O'PAKE, STOUT, RHOADES, WOZNIAK AND THOMPSON,  
OCTOBER 14, 1997

REFERRED TO JUDICIARY, OCTOBER 14, 1997

AN ACT

1 Amending Titles 15 (Corporations and Unincorporated  
2 Associations) and 54 (Names) of the Pennsylvania Consolidated  
3 Statutes, relating to associations; making revisions,  
4 corrections and additions; and making repeals.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the GAA  
9 Amendments Act of (in preparing this act for printing in the  
10 Laws of Pennsylvania, the Legislative Reference Bureau shall  
11 insert here, in lieu of this statement, the calendar year of  
12 enactment of this act).

13 Section 2. Amendment of Title 15.

14 As much of Title 15 as is hereinafter set forth is amended or  
15 added to read:

16 § 102. Definitions.

17 Subject to additional or inconsistent definitions contained  
18 in subsequent provisions of this title that are applicable to

1 specific provisions of this title, the following words and  
2 phrases when used in this title shall have, unless the context  
3 clearly indicates otherwise, the meanings given to them in this  
4 section:

5 \* \* \*

6 "Limited liability company." A domestic or foreign limited  
7 liability company as defined in section 8903 (relating to  
8 definitions and index of definitions).

9 "Profession." Includes the performance of any type of  
10 personal service to the public that requires as a condition  
11 precedent to the performance of the service the obtaining of a  
12 license or admission to practice or other legal authorization  
13 from the Supreme Court of Pennsylvania or a licensing board or  
14 commission under the Bureau of Professional and Occupational  
15 Affairs in the Department of State. Except as otherwise  
16 expressly provided by law, this definition shall be applicable  
17 to this title only and shall not affect the interpretation of  
18 any other statute or any local zoning ordinance or other  
19 official document heretofore or hereafter enacted or  
20 promulgated.

21 "Professional services." Any type of services that may be  
22 rendered by a member of a profession within the purview of his  
23 profession.

24 \* \* \*

25 § 135. Requirements to be met by filed documents.

26 \* \* \*

27 (e) Distinguishable names.--A name shall not be considered  
28 distinguishable upon the records of the department from another  
29 name for purposes of this title and Title 54 (relating to names)  
30 solely because the names differ from each other in any or all of

1 the following respects:

2 (1) the use of punctuation marks;

3 (2) the use of the definite or indefinite article; or

4 (3) the use of any of the following terms to designate

5 the status of an association: "corporation," "company,"

6 "incorporated," "limited," "association," "fund,"

7 "syndicate," "limited partnership," "limited liability

8 company," "trust" or "business trust" or abbreviations of any

9 of the foregoing terms or words or abbreviations of like

10 import in languages other than English.

11 § 138. Statement of correction.

12 \* \* \*

13 (b) Effect of filing.--

14 \* \* \*

15 (2) A filing under this section shall not have the  
16 effect of causing original articles of incorporation of a  
17 corporation or a similar type of document creating any other  
18 form of association to be stricken from the records of the  
19 department but the articles or other document may be  
20 corrected under this section.

21 \* \* \*

22 (d) Cross reference.--See section 135 (relating to  
23 requirements to be met by filed documents).

24 § 161. Domestication of certain alien associations.

25 \* \* \*

26 (b) Statement of domestication.--The statement of  
27 domestication shall be executed by the association and shall set  
28 forth in the English language:

29 (1) The name of the association. If the name is in a  
30 foreign language, it shall be set forth in Roman letters or

1 characters or Arabic or Roman numerals. If the name is one  
2 that is rendered unavailable for use by a corporation by any  
3 provision of section 1303(b) or (c) (relating to corporate  
4 name), the association shall adopt a new name, in accordance  
5 with any procedures for changing the name of the association  
6 that are applicable prior to the domestication of the  
7 association, and shall set forth the new name in the  
8 statement.

9 (2) The name of the jurisdiction under the laws of which  
10 and the date on which it was first formed, incorporated or  
11 otherwise came into being.

12 (3) The name of the jurisdiction that constituted the  
13 seat, siege social or principal place of business or control  
14 administration of the association, or any equivalent under  
15 applicable law, immediately prior to the filing of the  
16 statement.

17 (4) A statement [that upon domestication the association  
18 will be a domestic association under the laws of this  
19 Commonwealth] of the type of domestic association that the  
20 association will be upon domestication.

21 (5) A statement that the filing of the statement of  
22 domestication and, if desired, the renunciation of the prior  
23 domicile has been authorized (unless its charter or other  
24 organic documents require a greater vote) by a majority in  
25 interest of the shareholders, members or other proprietors of  
26 the association.

27 (6) If the association will be a type of domestic  
28 association that is created by a filing in the department,  
29 such other provisions as are required to be included in an  
30 initial filing to create that type of domestic association,

1 except that it shall not be necessary to set forth the name  
2 of the person organizing the association.

3 (7) Any other provision that the association may choose  
4 to insert unless this title prohibits the inclusion of such a  
5 provision in a filing that creates the type of domestic  
6 association that the association will be upon domestication.

7 (c) Execution.--The statement shall be signed on behalf of  
8 the association by any authorized person.

9 (d) Effect of domestication.--Upon the filing of the  
10 statement of domestication, the association shall be  
11 domesticated in this Commonwealth and the association shall  
12 thereafter be subject to any applicable provisions of this  
13 title[, except Subpart B of Part II (relating to business  
14 corporations),] and [to] any other provisions of law applicable  
15 to associations existing under the laws of this Commonwealth. If  
16 the association will be a type of domestic association that is  
17 created by a filing in the department, the statement of  
18 domestication shall constitute that filing. The domestication of  
19 any association in this Commonwealth pursuant to this section  
20 shall not be deemed to affect any obligations or liabilities of  
21 the association incurred prior to its domestication.

22 (e) Exclusion.--An association that can be domesticated  
23 under [section 4161 (relating to domestication) or 6161  
24 (relating to domestication)] any of the following sections shall  
25 not be domesticated under this section:

26 Section 4161 (relating to domestication).

27 Section 6161 (relating to domestication).

28 Section 8590 (relating to domestication).

29 Section 8982 (relating to domestication).

30 Section 9501(a)(1)(ii) (relating to application and

1 effect of chapter).

2 (f) Definition.--As used in this section, the term  
3 "association," except as restricted by subsection (e), includes  
4 any alien incorporated organization, private law corporation  
5 (whether or not organized for business purposes), public law  
6 corporation, partnership, proprietorship, joint venture,  
7 foundation, trust, association or similar organization or entity  
8 existing under the laws of any jurisdiction other than this  
9 Commonwealth.

10 (g) Cross [reference] references.--See [section] sections  
11 134 (relating to docketing statement) and 135 (relating to  
12 requirements to be met by filed documents).

13 § 162. Contingent domestication of certain alien associations.

14 \* \* \*

15 (c) Statement of consummation of domestication.--At any time  
16 after the filing of a statement of contingent domestication, the  
17 association may file in the department a statement of  
18 consummation of domestication which shall be executed by the  
19 association and shall set forth:

20 (1) The name of the association[. If the name is in a  
21 foreign language, it shall be set forth in Roman letters or  
22 characters or Arabic or Roman numerals.] as set forth in its  
23 statement of contingent domestication.

24 \* \* \*

25 (j) Cross [reference] references.--See [section] sections  
26 134 (relating to docketing statement) and 135 (relating to  
27 requirements to be met by filed documents).

28 § 1303. Corporate name.

29 \* \* \*

30 (b) Duplicate use of names.--The corporate name shall [not

1 be the same as or confusingly similar to] be distinguishable  
2 upon the records of the Department of State from:

3 (1) The name of any other domestic corporation for  
4 profit or not-for-profit which is either in existence or for  
5 which articles of incorporation have been filed but have not  
6 yet become effective, or of any foreign corporation for  
7 profit or not-for-profit which is either authorized to do  
8 business in this Commonwealth or for which an application for  
9 a certificate of authority has been filed but has not yet  
10 become effective, [or of any domestic or foreign limited  
11 partnership that has filed in the Department of State a  
12 certificate or qualified under Chapter 85 (relating to  
13 limited partnerships) or under corresponding provisions of  
14 prior law,] or the name of any association registered at any  
15 time under 54 Pa.C.S. Ch. 5 (relating to corporate and other  
16 association names), unless[: (i) where the name is the same  
17 or confusingly similar,] the other association:

18 [(A)] (i) has stated that it is about to change  
19 its name, or to cease to do business, or is being  
20 wound up, or is a foreign association about to  
21 withdraw from doing business in this Commonwealth,  
22 and the statement and [the] a written consent [of the  
23 other association] to the adoption of the name  
24 executed by the other association is filed in the  
25 Department of State;

26 [(B)] (ii) has filed with the Department of  
27 Revenue a certificate of out of existence, or has  
28 failed for a period of three successive years to file  
29 with the Department of Revenue a report or return  
30 required by law and the fact of such failure has been

1 certified by the Department of Revenue to the  
2 Department of State;

3 [(C)] (iii) has abandoned its name under the  
4 laws of its jurisdiction of incorporation, by  
5 amendment, merger, consolidation, division,  
6 expiration, dissolution or otherwise, without its  
7 name being adopted by a successor in a merger,  
8 consolidation, division or otherwise, and an official  
9 record of that fact, certified as provided by 42  
10 Pa.C.S. § 5328 (relating to proof of official  
11 records), is presented by any person to the  
12 department; or

13 [(D)] (iv) has had the registration of its name  
14 under 54 Pa.C.S. Ch. 5 terminated and, if the  
15 termination was effected by operation of 54 Pa.C.S. §  
16 504 (relating to effect of failure to make decennial  
17 filings), the application for the use of the name is  
18 accompanied by a verified statement stating that at  
19 least 30 days' written notice of intention to  
20 appropriate the name was given to the delinquent  
21 association at its [registered office] last known  
22 place of business and that, after diligent search by  
23 the affiant, the affiant believes the association to  
24 be out of existence.]; or

25 (ii) where the name is confusingly similar, the  
26 consent of the other association to the adoption of the  
27 name is filed in the Department of State.

28 The consent of the association shall be evidenced by a  
29 statement to that effect executed by the association.]

30 \* \* \*



(e) Remedies for violation of section.--The use of a name in violation of this section shall not vitiate or otherwise affect the corporate existence but any court having jurisdiction may enjoin the corporation from using or continuing to use a name in violation of this section, upon the application of:

(1) the Attorney General, acting on his own motion or at the instance of any administrative department, board or commission of this Commonwealth; or

(2) any person adversely affected.];  
may enjoin the corporation from using or continuing to use a name in violation of this section.]

(f) Cross references.--See sections 135(e) (relating to distinguishable names) and 1106(b)(2) (relating to uniform application of subpart).

§ 1304. Required name changes by senior corporations.

\* \* \*

(b) Enforcement of undertaking to release name.--If a corporation has used a name [the same as or confusingly similar to] that is not distinguishable upon the records of the Department of State from the name of another corporation or other association as permitted by section [1303(b)(1)(i)] 1303(b)(1) (relating to duplicate use of names) and the other corporation or other association continues to use its name in this Commonwealth and does not change its name, cease to do business, be wound up or withdraw as it proposed to do in its consent or change its name as required by subsection (a), any court having jurisdiction may enjoin the other corporation or other association from continuing to use its name or a name that is not distinguishable therefrom, upon the application of:

(1) the Attorney General, acting on his own motion or at

1 the instance of any administrative department, board or  
2 commission of this Commonwealth; or

3 (2) any person adversely affected.];  
4 may enjoin the other corporation or other association from  
5 continuing to use its name or a confusingly similar name.]

6 § 1311. Filing of statement of summary of record by certain  
7 corporations.

8 (a) General rule.--Where any of the [valid] charter  
9 documents of a business corporation are not on file in the  
10 Department of State or there is an error in any such document as  
11 transferred to the department pursuant to section 140 (relating  
12 to custody and management of orphan corporate and business  
13 records), and the corporation desires to file any document in  
14 the department under any other provision of this subpart or the  
15 corporation desires to secure from the department any  
16 certificate to the effect that the corporation is a corporation  
17 duly incorporated and existing under the laws of this  
18 Commonwealth or a certified copy of the articles of the  
19 corporation or the corporation desires to correct the text of  
20 its charter documents as on file in the department, the  
21 corporation shall file in the department a statement of summary  
22 of record which shall be executed by the corporation and shall  
23 set forth:

24 (1) The name of the corporation and, subject to section  
25 109 (relating to name of commercial registered office  
26 provider in lieu of registered address), the location,  
27 including street and number, if any, of its registered  
28 office.

29 (2) The statute by or under which the corporation was  
30 incorporated.

1           (3) The name under which, the manner in which and the  
2           date on which the corporation was originally incorporated,  
3           including the date when and the place where the original  
4           articles were recorded.

5           (4) The place or places, including volume and page  
6           numbers or their equivalent, where the documents  
7           [constituting the currently effective articles are] that are  
8           not on file in the department or that require correction in  
9           the records of the department were originally filed or  
10          recorded, the date or dates of each filing or recording and  
11          the correct text of the [currently effective articles.]  
12          documents. The information specified in this paragraph may be  
13          omitted in a statement of summary of record that is delivered  
14          to the department contemporaneously with amended and restated  
15          articles of the corporation filed under this subpart.

16          [(5) Each name by which the corporation was known, if  
17          any, other than its original name and its current name, and  
18          the date or dates on which each change of name of the  
19          corporation became effective.

20          (6) In the case of any entity brought within the scope  
21          of Chapter 29 (relating to professional corporations) by or  
22          pursuant to section 2905 (relating to election of  
23          professional associations to become professional  
24          corporations), amended and restated articles of incorporation  
25          which shall include all of the information required to be set  
26          forth in restated articles of a professional corporation.

27          A corporation shall be required to make only one filing under  
28          this subsection.]

29          (b) Validation of prior defects in incorporation.--Upon the  
30          filing of a statement by a corporation under this section or the

1 transfer to the department of the records relating to a  
2 corporation pursuant to section 140, the corporation [named in  
3 the statement] shall be deemed to be a validly subsisting  
4 corporation to the same extent as if it had been duly  
5 incorporated and was existing under this subpart and the  
6 department shall so certify regardless of any absence of or  
7 defect in the prior proceedings relating to incorporation.

8 (c) Cross [reference] references.--See [section] sections  
9 134 (relating to docketing statement), 135 (relating to  
10 requirements to be met by filed documents) and 1106(b)(2)  
11 (relating to uniform application of subpart).

12 § 1504. Adoption, amendment and contents of bylaws.

13 \* \* \*

14 (d) Amendment of voting provisions.--

15 (1) Unless otherwise provided in a bylaw adopted by the  
16 shareholders, whenever [the bylaws require] a bylaw adopted  
17 by the shareholders requires for the taking of any action by  
18 the shareholders or a class of shareholders a specific number  
19 or percentage of votes, the provision of the bylaws setting  
20 forth that requirement shall not be amended or repealed by  
21 any lesser number or percentage of votes of the shareholders  
22 or of the class of shareholders or only by action of the  
23 board of directors.

24 (2) Paragraph (1) shall not apply to a bylaw setting  
25 forth the right of shareholders to act by unanimous written  
26 consent as provided in section 1766(a) (relating to unanimous  
27 consent).

28 § 1505. Persons bound by bylaws.

29 Except as otherwise provided by section 1713 (relating to  
30 personal liability of directors) or any similar provision of

1 law, the bylaws of a business corporation shall operate only as  
2 regulations among the shareholders, directors and officers of  
3 the corporation and shall not affect contracts or other dealings  
4 with other persons unless those persons have actual knowledge of  
5 the bylaws.

6 § 1508. Corporate records; inspection by shareholders.

7 (a) Required records.--Every business corporation shall keep  
8 complete and accurate books and records of account, minutes of  
9 the proceedings of the incorporators, shareholders and directors  
10 and a share register giving the names and addresses of all  
11 shareholders and the number and class of shares held by each.  
12 The share register shall be kept at [either] any of the  
13 following locations:

14 (1) the registered office of the corporation in this  
15 Commonwealth [or at its];

16 (2) the principal place of business of the corporation  
17 wherever situated;

18 (3) any actual business office of the corporation; or  
19 [at]

20 (4) the office of [its] the registrar or transfer agent  
21 of the corporation. [Any books, minutes or other records may  
22 be in written form or any other form capable of being  
23 converted into written form within a reasonable time.]

24 (b) Right of inspection by a shareholder.--Every shareholder  
25 shall, upon written verified demand stating the purpose thereof,  
26 have a right to examine, in person or by agent or attorney,  
27 during the usual hours for business for any proper purpose, the  
28 share register, books and records of account, and records of the  
29 proceedings of the incorporators, shareholders and directors and  
30 to make copies or extracts therefrom. A proper purpose shall

1 mean a purpose reasonably related to the interest of the person  
2 as a shareholder. In every instance where an attorney or other  
3 agent is the person who seeks the right of inspection, the  
4 demand shall be accompanied by a verified power of attorney or  
5 other writing that authorizes the attorney or other agent to so  
6 act on behalf of the shareholder. The demand shall be directed  
7 to the corporation:

8       (1) at its registered office in this Commonwealth [or];

9       (2) at its principal place of business wherever  
10       situated; or

11       (3) in care of the person in charge of an actual  
12       business office of the corporation.

13       (c) Proceedings for the enforcement of inspection by a  
14 shareholder.--If the corporation, or an officer or agent  
15 thereof, refuses to permit an inspection sought by a shareholder  
16 or attorney or other agent acting for the shareholder pursuant  
17 to subsection (b) or does not reply to the demand within five  
18 business days after the demand has been made, the shareholder  
19 may apply to the court for an order to compel the inspection.  
20 The court shall determine whether or not the person seeking  
21 inspection is entitled to the inspection sought. The court may  
22 summarily order the corporation to permit the shareholder to  
23 inspect the share register and the other books and records of  
24 the corporation and to make copies or extracts therefrom, or the  
25 court may order the corporation to furnish to the shareholder a  
26 list of its shareholders as of a specific date on condition that  
27 the shareholder first pay to the corporation the reasonable cost  
28 of obtaining and furnishing the list and on such other  
29 conditions as the court deems appropriate. Where the shareholder  
30 seeks to inspect the books and records of the corporation, other

1 than its share register or list of shareholders, he shall first  
2 establish:

3 (1) That he has complied with the provisions of this  
4 section respecting the form and manner of making demand for  
5 inspection of the document.

6 (2) That the inspection he seeks is for a proper  
7 purpose.

8 Where the shareholder seeks to inspect the share register or  
9 list of shareholders of the corporation and he has complied with  
10 the provisions of this section respecting the form and manner of  
11 making demand for inspection of the documents, the burden of  
12 proof shall be upon the corporation to establish that the  
13 inspection he seeks is for an improper purpose. The court may,  
14 in its discretion, prescribe any limitations or conditions with  
15 reference to the inspection or award such other or further  
16 relief as the court deems just and proper. The court may order  
17 books, documents and records, pertinent extracts therefrom, or  
18 duly authenticated copies thereof, to be brought into this  
19 Commonwealth and kept in this Commonwealth upon such terms and  
20 conditions as the order may prescribe.

21 (d) Certain provisions of articles ineffective.--This  
22 section may not be relaxed by any provision of the articles.

23 (e) Cross [reference] references.--See [section] sections  
24 107 (relating to form of records), 1512 (relating to  
25 informational rights of a director) and 1763(c) (relating to  
26 certification by nominee).

27 § 1512. Informational rights of a director.

28 (a) General rule.--To the extent reasonably related to the  
29 performance of the duties of the director, including those  
30 arising from service as a member of a committee of the board of

directors, a director of a business corporation is entitled:

(1) in person or by any attorney or other agent, at any reasonable time, to inspect and copy corporate books, records and documents and, in addition, to inspect, and receive information regarding, the assets, liabilities and operations of the corporation and any subsidiaries of the corporation incorporated or otherwise organized or created under the laws of this Commonwealth that are controlled directly or indirectly by the corporation; and

(2) to demand that the corporation exercise whatever rights it may have to obtain information regarding any other subsidiaries of the corporation.

(b) Proceedings for enforcement of inspection by a director.--If the corporation, or an officer or agent thereof, refuses to permit an inspection or obtain or provide information sought by a director or attorney or other agent acting for the director pursuant to subsection (a) or does not reply to the request within two business days after the request has been made, the director may apply to the court for an order to compel the inspection or the obtaining or providing of the information. The court shall summarily order the corporation to permit the requested inspection or to obtain the information unless the corporation establishes that the information to be obtained by the exercise of the right is not reasonably related to the performance of the duties of the director or that the director or the attorney or agent of the director is likely to use the information in a manner that would violate the duty of the director to the corporation. The order of the court may contain provisions protecting the corporation from undue burden or expense and prohibiting the director from using the information



1 in a manner that would violate the duty of the director to the  
2 corporation.

3 (c) Cross references.--See sections 107 (relating to form of  
4 records) and 1508 (relating to corporate records; inspection by  
5 shareholders) and 42 Pa.C.S. § 2503(7) (relating to right of  
6 participants to receive counsel fees).

7 § 1521. Authorized shares.

8 \* \* \*

9 (b) Provisions specifically authorized.--

10 (1) Without limiting the authority contained in  
11 subsection (a), a corporation, when so authorized in its  
12 articles, may issue classes or series of shares:

13 (i) Subject to the right or obligation of the  
14 corporation to redeem any of the shares for the  
15 consideration, if any, fixed by or in the manner provided  
16 by the articles for the redemption thereof. Unless  
17 otherwise provided in the articles, any shares subject to  
18 redemption shall be redeemable only pro rata or by lot or  
19 by such other equitable method as may be selected by the  
20 corporation. [An amendment of the articles to add or  
21 amend a provision permitting the redemption of any shares  
22 by a method that is not pro rata nor by lot nor otherwise  
23 equitable may be effected only pursuant to section 1906  
24 (relating to special treatment of holders of shares of  
25 same class or series).]

26 (ii) Entitling the holders thereof to cumulative,  
27 noncumulative or partially cumulative dividends.

28 (iii) Having preference over any other shares as to  
29 dividends or assets or both.

30 (iv) Convertible into shares of any other class or

series, or into obligations of the corporation.

(2) Any of the terms of a class or series of shares may be made dependent upon:

(i) Facts ascertainable outside of the articles if the manner in which the facts will operate upon the terms of the class or series is set forth in the articles. Such facts may include, without limitation, actions or events within the control of or determinations made by the corporation or a representative of the corporation.

\* \* \*

(d) Status and rights.--Shares of a business corporation shall be deemed personal property. Except as otherwise provided by the articles or, when so permitted by subsection (c), by one or more bylaws adopted by the shareholders, each share shall be in all respects equal to every other share. See section 1906(d)(4) (relating to special treatment of holders of shares of same class or series).

§ 1526. Liability of [subscribers and] shareholders.

[A subscriber to, or holder or owner of, shares of a business corporation shall not be under any liability to the corporation or any creditor thereof with respect to the shares other than the personal obligation of a shareholder who has acquired his shares by subscription to comply with the terms of the subscription.] (a) General rule.--A shareholder of a business corporation shall not be liable, solely by reason of being a shareholder, under an order of a court or in any other manner for a debt, obligation or liability of the corporation of any kind or for the acts of any shareholder or representative of the corporation.

(b) Professional relationship unaffected.--Subsection (a)

1 shall not afford the shareholders of a business corporation that  
2 is not a professional corporation, but that provides  
3 professional services, with greater immunity than is available  
4 to the officers, shareholders, employees or agents of a business  
5 corporation that is a professional corporation. See section 2925  
6 (relating to professional relationship retained).

7 (c) Disciplinary jurisdiction unaffected.--A business  
8 corporation providing professional services shall be subject to  
9 the applicable rules and regulations adopted by, and all the  
10 disciplinary powers of, the court, department, board, commission  
11 or other government unit regulating the profession in which the  
12 corporation is engaged. The court, department, board or other  
13 government unit may require that a corporation include in its  
14 articles provisions that conform to any rule or regulation  
15 heretofore or hereafter promulgated for the purpose of enforcing  
16 the ethics of a profession. This subpart shall not affect or  
17 impair the disciplinary powers of the court, department, board,  
18 commission or other government unit over licensed persons or any  
19 law, rule or regulation pertaining to the standards for  
20 professional conduct of licensed persons or to the professional  
21 relationship between any licensed person rendering professional  
22 services and the person receiving professional services.

23 § 1571. Application and effect of subchapter.

24 (a) General rule.--Except as otherwise provided in  
25 subsection (b), any shareholder (as defined in section 1572  
26 (relating to definitions)) of a business corporation shall have  
27 the right to dissent from, and to obtain payment of the fair  
28 value of his shares in the event of, any corporate action, or to  
29 otherwise obtain fair value for his shares, only where this part  
30 expressly provides that a shareholder shall have the rights and

remedies provided in this subchapter. See:

Section 1906(c) (relating to dissenters rights upon special treatment).

Section 1930 (relating to dissenters rights).

Section 1931(d) (relating to dissenters rights in share exchanges).

Section 1932(c) (relating to dissenters rights in asset transfers).

Section 1952(d) (relating to dissenters rights in division).

Section 1962(c) (relating to dissenters rights in conversion).

Section 2104(b) (relating to procedure).

Section 2324 (relating to corporation option where a restriction on transfer of a security is held invalid).

Section 2325(b) (relating to minimum vote requirement).

Section 2704(c) (relating to dissenters rights upon election).

Section 2705(d) (relating to dissenters rights upon renewal of election).

Section 2904(b) (relating to procedure).

Section 2907(a) (relating to proceedings to terminate breach of qualifying conditions).

Section 7104(b)(3) (relating to procedure).

(b) Exceptions.--

(1) Except as otherwise provided in paragraph (2), the holders of the shares of any class or series of shares [that, at] shall not have the right to dissent and obtain payment of the fair value of the shares under this subchapter if, on the record date fixed to determine the shareholders entitled to

1 notice of and to vote at the meeting at which a plan  
2 specified in any of section 1930, 1931(d), 1932(c) or 1952(d)  
3 is to be voted on, or on the date of the first public  
4 announcement that such a plan has been approved by the  
5 shareholders by written consent without a meeting, the shares  
6 are either:

7 (i) listed on a national securities exchange or  
8 designated as a national market system security on an  
9 interdealer quotation system by the National Association  
10 of Securities Dealers, Inc.; or

11 (ii) held beneficially or of record by more than  
12 2,000 [shareholders;  
13 shall not have the right to obtain payment of the fair value  
14 of any such shares under this subchapter.] persons.

15 (2) Paragraph (1) shall not apply to and dissenters  
16 rights shall be available without regard to the exception  
17 provided in that paragraph in the case of:

18 (i) [Shares converted by a plan if the shares are  
19 not converted solely into shares of the acquiring,  
20 surviving, new or other corporation or solely into such  
21 shares and money in lieu of fractional shares.]

22 (Repealed.)

23 (ii) Shares of any preferred or special class or  
24 series unless the articles, the plan or the terms of the  
25 transaction entitle all shareholders of the class or  
26 series to vote thereon and require for the adoption of  
27 the plan or the effectuation of the transaction the  
28 affirmative vote of a majority of the votes cast by all  
29 shareholders of the class or series.

30 (iii) Shares entitled to dissenters rights under

1 section 1906(c) (relating to dissenters rights upon  
2 special treatment).

3 (3) The shareholders of a corporation that acquires by  
4 purchase, lease, exchange or other disposition all or  
5 substantially all of the shares, property or assets of  
6 another corporation by the issuance of shares, obligations or  
7 otherwise, with or without assuming the liabilities of the  
8 other corporation and with or without the intervention of  
9 another corporation or other person, shall not be entitled to  
10 the rights and remedies of dissenting shareholders provided  
11 in this subchapter regardless of the fact, if it be the case,  
12 that the acquisition was accomplished by the issuance of  
13 voting shares of the corporation to be outstanding  
14 immediately after the acquisition sufficient to elect a  
15 majority or more of the directors of the corporation.

16 \* \* \*

17 (g) Computation of beneficial ownership.--For purposes of  
18 subsection (b)(1)(ii), shares that are held beneficially as  
19 joint tenants, tenants by the entireties, tenants in common or  
20 in trust by two or more persons, as fiduciaries or otherwise,  
21 shall be deemed to be held beneficially by one person.

22 [(g)] (h) Cross references.--See sections 1105 (relating to  
23 restriction on equitable relief), 1904 (relating to de facto  
24 transaction doctrine abolished), 1763(c) (relating to  
25 determination of shareholders of record) and 2512 (relating to  
26 dissenters rights procedure).

27 § 1572. Definitions.

28 The following words and phrases when used in this subchapter  
29 shall have the meanings given to them in this section unless the  
30 context clearly indicates otherwise:

1 "Corporation." The issuer of the shares held or owned by the  
2 dissenter before the corporate action or the successor by  
3 merger, consolidation, division, conversion or otherwise of that  
4 issuer. A plan of division may designate which one or more of  
5 the resulting corporations is the successor corporation for the  
6 purposes of this subchapter. The designated successor  
7 corporation or corporations in a division shall have sole  
8 responsibility for payments to dissenters and other liabilities  
9 under this subchapter except as otherwise provided in the plan  
10 of division.

11 "Dissenter." A shareholder [or beneficial owner] who is  
12 entitled to and does assert dissenters rights under this  
13 subchapter and who has performed every act required up to the  
14 time involved for the assertion of those rights.

15 \* \* \*

16 "Shareholder." A shareholder as defined in section 1103  
17 (relating to definitions), or an ultimate beneficial owner of  
18 shares, including without limitation a holder of depository  
19 receipts, where the beneficial interest owned includes an  
20 interest in the assets of the corporation upon dissolution.

21 § 1704. Place and notice of meetings of shareholders.

22 (a) Place.--Meetings of shareholders may be held at such  
23 place within or without this Commonwealth as may be provided in  
24 or fixed pursuant to the bylaws. Unless otherwise provided in or  
25 pursuant to the bylaws, all meetings of the shareholders shall  
26 be held [in this Commonwealth at the registered office of the  
27 corporation] at the executive office of the corporation wherever  
28 situated.

29 \* \* \*

30 § 1709. Conduct of shareholders meeting.

1     (a) Presiding officer.--There shall be a presiding officer  
2     at every meeting of the shareholders. The presiding officer  
3     shall be appointed in the manner provided in the bylaws or, in  
4     the absence of such provision, by the board of directors. If the  
5     bylaws are silent on the appointment of the presiding officer  
6     and the board fails to designate a presiding officer, the  
7     president shall be the presiding officer.

8     (b) Authority of the presiding officer.--Except as otherwise  
9     provided in the bylaws, the presiding officer shall determine  
10    the order of business and shall have the authority to establish  
11    rules for the conduct of the meeting.

12    (c) Procedural standard.--Any action by the presiding  
13    officer in adopting rules for, and in conducting, a meeting  
14    shall be fair to the shareholders.

15    (d) Closing of the polls.--The presiding officer shall  
16    announce at the meeting when the polls close for each matter  
17    voted upon. If no announcement is made, the polls shall be  
18    deemed to have closed upon the final adjournment of the meeting.  
19    After the polls close, no ballots, proxies or votes, nor any  
20    revocations or changes thereto, may be accepted.

21    § 1729. Voting rights of directors.

22    (a) General rule.--Unless otherwise provided in a bylaw  
23    adopted by the shareholders, every director of a business  
24    corporation shall be entitled to one vote. Without limiting the  
25    generality of the foregoing, a bylaw adopted by the shareholders  
26    may provide that a class or other defined group of directors  
27    shall have multiple or fractional voting rights, or no right to  
28    vote, either generally or under specified circumstances.

29    (b) [Multiple and fractional voting] Application of  
30    procedural requirements.--Any requirement of this subpart for



1 the presence of or vote or other action by a specified  
2 percentage of directors shall be satisfied by the presence of or  
3 vote or other action by directors entitled to cast the specified  
4 percentage of the votes that all voting directors in office are  
5 entitled to cast.

6 § 1731. Executive and other committees of the board.

7 (a) Establishment and powers.--Unless otherwise restricted  
8 in the bylaws:

9 \* \* \*

10 (2) Any committee, to the extent provided in the  
11 resolution of the board of directors or in the bylaws, shall  
12 have and may exercise all of the powers and authority of the  
13 board of directors except that a committee shall not have any  
14 power or authority as to the following:

15 (i) The submission to shareholders of any action  
16 requiring approval of shareholders under this subpart.

17 (ii) The creation or filling of vacancies in the  
18 board of directors.

19 (iii) The adoption, amendment or repeal of the  
20 bylaws.

21 (iv) The amendment or repeal of any resolution of  
22 the board that by its terms is amendable or repealable  
23 only by the board.

24 (v) Action on matters committed by the bylaws or  
25 resolution of the board of directors exclusively to  
26 another committee of the board.

27 \* \* \*

28 § 1745. Advancing expenses.

29 Expenses (including attorneys' fees) incurred in defending  
30 any action or proceeding referred to in this subchapter may be

1 paid by a business corporation in advance of the final  
2 disposition of the action or proceeding upon receipt of an  
3 undertaking by or on behalf of the representative to repay the  
4 amount if it is ultimately determined that he is not entitled to  
5 be indemnified by the corporation as authorized in this  
6 subchapter or otherwise. Except as otherwise provided in the  
7 bylaws, advancement of expenses shall be authorized by the board  
8 of directors. Sections 1728 (relating to interested directors or  
9 officers; quorum) and 2538 (relating to approval of transactions  
10 with interested shareholders) shall not be applicable to the  
11 advancement of expenses under this section.

12 § 1748. Application to surviving or new corporations.

13 [For] (a) General rule.--Except as provided in subsection  
14 (b), for the purposes of this subchapter, references to "the  
15 corporation" include all constituent corporations absorbed in a  
16 consolidation, merger or division, as well as the surviving or  
17 new corporations surviving or resulting therefrom, so that any  
18 person who is or was a representative of the constituent,  
19 surviving or new corporation, or is or was serving at the  
20 request of the constituent, surviving or new corporation as a  
21 representative of another domestic or foreign corporation for  
22 profit or not-for-profit, partnership, joint venture, trust or  
23 other enterprise, shall stand in the same position under the  
24 provisions of this subchapter with respect to the surviving or  
25 new corporation as he would if he had served the surviving or  
26 new corporation in the same capacity.

27 (b) Divisions.--Notwithstanding subsection (a), the  
28 obligations of a dividing corporation to indemnify and advance  
29 expenses to its representatives, whether arising under this  
30 subchapter or otherwise, may be allocated in a division in the

1 same manner and with the same effect as any other liability of  
2 the dividing corporation.

3 § 1756. Quorum.

4 (a) General rule.--A meeting of shareholders of a business  
5 corporation duly called shall not be organized for the  
6 transaction of business unless a quorum is present. Unless  
7 otherwise provided in a bylaw adopted by the shareholders:

8 \* \* \*

9 (4) If a proxy casts a vote on behalf of a shareholder  
10 on any issue considered at a meeting of shareholders, the  
11 shareholder shall be deemed to be present during the entire  
12 meeting for purposes of determining whether a quorum is  
13 present for consideration of any other issue.

14 \* \* \*

15 § 1758. Voting rights of shareholders.

16 \* \* \*

17 (b) Procedures for election of directors.--[If the bylaws  
18 provide a fair and reasonable procedure for the nomination of  
19 candidates for any office, only candidates who have been duly  
20 nominated in accordance therewith shall be eligible for  
21 election.] Unless otherwise restricted in the bylaws, in  
22 elections for directors, voting need not be by ballot unless  
23 required by vote of the shareholders before the voting for  
24 election of directors begins. The candidates for election as  
25 directors receiving the highest number of votes from each class  
26 or group of classes, if any, entitled to elect directors  
27 separately up to the number of directors to be elected by the  
28 class or group of classes shall be elected. If at any meeting of  
29 shareholders, directors of more than one class are to be  
30 elected, each class of directors shall be elected in a separate

1 election.

2 \* \* \*

3 (e) Advance notice of nominations and other business.--If  
4 the bylaws provide a fair and reasonable procedure for the  
5 nomination of candidates for election as directors, only  
6 candidates who have been duly nominated in accordance therewith  
7 shall be eligible for election. If the bylaws impose a fair and  
8 reasonable requirement of advance notice of proposals to be made  
9 by a shareholder at the annual meeting of the shareholders, only  
10 proposals for which advance notice has been properly given may  
11 be acted upon at the meeting.

12 § 1906. Special treatment of holders of shares of same class or  
13 series.

14 (a) General rule.--Except as otherwise restricted in the  
15 articles, [an amendment or] a plan may contain a provision  
16 classifying the holders of shares of a class or series into one  
17 or more separate groups by reference to any facts or  
18 circumstances that are not manifestly unreasonable and providing  
19 mandatory treatment for shares of the class or series held by  
20 particular shareholders or groups of shareholders that differs  
21 materially from the treatment accorded other shareholders or  
22 groups of shareholders holding shares of the same class or  
23 series (including a provision modifying or rescinding rights  
24 previously created under this section) if:

25 (1) (i) such provision is specifically authorized by a  
26 majority of the votes cast by all shareholders entitled  
27 to vote on the [amendment or] plan, as well as by a  
28 majority of the votes cast by any class or series of  
29 shares any of the shares of which are so classified into  
30 groups, whether or not such class or series would

1 otherwise be entitled to vote on the [amendment or] plan;  
2 and

3 (ii) the provision voted on specifically enumerates  
4 the type and extent of the special treatment authorized;  
5 or

6 (2) under all the facts and circumstances, a court of  
7 competent jurisdiction finds such special treatment is  
8 undertaken in good faith, after reasonable deliberation and  
9 is in the best interest of the corporation.

10 (b) Statutory voting rights upon special treatment.--Except  
11 as provided in subsection (c), if [an amendment or] a plan  
12 contains a provision for special treatment, each group of  
13 holders of any outstanding shares of a class or series who are  
14 to receive the same special treatment under the [amendment or]  
15 plan shall be entitled to vote as a special class in respect to  
16 the plan regardless of any limitations stated in the articles or  
17 bylaws on the voting rights of any class or series.

18 (c) Dissenters rights upon special treatment.--If any  
19 [amendment or] plan contains a provision for special treatment  
20 without requiring for the adoption of the [amendment or] plan  
21 the statutory class vote required by subsection (b), the holder  
22 of any outstanding shares the statutory class voting rights of  
23 which are so denied, who objects to the [amendment or] plan and  
24 complies with Subchapter D of Chapter 15 (relating to dissenters  
25 rights), shall be entitled to the rights and remedies of  
26 dissenting shareholders provided in that subchapter.

27 (d) Exceptions.--This section shall not apply to:

28 (1) The creation or issuance of securities, contracts,  
29 warrants or other instruments evidencing any shares, option  
30 rights, securities having conversion or option rights or

obligations authorized by section 2513 (relating to disparate treatment of certain persons).

(2) A provision of [an amendment or] a plan that offers to all holders of shares of a class or series the same option to elect certain treatment.

(3) [An amendment or] A plan that contains an express provision that this section shall not apply or that fails to contain an express provision that this section shall apply. The shareholders of a corporation that proposes [an amendment or] a plan to which this section is not applicable by reason of this paragraph shall have the remedies contemplated by section 1105 (relating to restriction on equitable relief).

(4) A provision of a plan that treats all of the holders of a particular class or series of shares differently from the holders of another class or series. A provision of a plan that treats the holders of a class or series of shares differently from the holders of another class or series of shares shall not constitute a violation of section 1521(d) (relating to authorized shares).

(e) Definition.--As used in this section, the term "plan" includes:

(1) an amendment of the articles that effects a reclassification of shares, whether or not the amendment is accompanied by a separate plan of reclassification; and

(2) a resolution recommending that the corporation dissolve voluntarily adopted under section 1972(a) (relating to proposal of voluntary dissolution).

§ 1912. Proposal of amendments.

\* \* \*

(c) Terms of amendment.--The resolution or petition may set

1 forth the manner and basis of reclassifying the shares of the  
2 corporation. Any of the terms of a plan of reclassification or  
3 other action contained in an amendment may be made dependent  
4 upon facts ascertainable outside of the amendment if the manner  
5 in which the facts will operate upon the terms of the amendment  
6 is set forth in the amendment. Such facts may include, without  
7 limitation, actions or events within the control of or  
8 determinations made by the corporation or a representative of  
9 the corporation.

10 § 1914. Adoption of amendments.

11 \* \* \*

12 (b) Statutory voting rights.--Except as provided in this  
13 subpart, the holders of the outstanding shares of a class or  
14 series of shares shall be entitled to vote as a class in respect  
15 of a proposed amendment regardless of any limitations stated in  
16 the articles or bylaws on the voting rights of any class or  
17 series if [a proposed] the amendment would:

18 (1) authorize the board of directors to fix and  
19 determine the relative rights and preferences, as between  
20 series, of any preferred or special class;

21 (2) make any change in the preferences, limitations or  
22 special rights (other than preemptive rights or the right to  
23 vote cumulatively) of the shares of a class or series adverse  
24 to the class or series;

25 (3) authorize a new class or series of shares having a  
26 preference as to dividends or assets which is senior to the  
27 shares of a class or series; [or]

28 (4) increase the number of authorized shares of any  
29 class or series having a preference as to dividends or assets  
30 which is senior in any respect to the shares of a class or

1 series; or

2 (5) make the outstanding shares of a class or series  
3 redeemable by a method that is not pro rata, by lot or  
4 otherwise equitable.

5 [then the holders of the outstanding shares of the class or  
6 series shall be entitled to vote as a class in respect to the  
7 amendment regardless of any limitations stated in the articles  
8 or bylaws on the voting rights of any class or series.]

9 (c) Adoption by board of directors.--Unless otherwise  
10 restricted in the articles, an amendment of articles shall not  
11 require the approval of the shareholders of the corporation if:

12 (1) shares have not been issued;

13 (2) the amendment is restricted to [any] one or more of  
14 the following:

15 (i) changing the corporate name;

16 (ii) providing for perpetual existence;

17 (iii) reflecting a reduction in authorized shares  
18 effected by operation of section 1552(a) (relating to  
19 power of corporation to acquire its own shares) and, if  
20 appropriate, deleting all references to a class or series  
21 of shares that is no longer outstanding; [or]

22 (iv) adding or deleting a provision authorized by  
23 section 1528(f) (relating to uncertificated shares)[.];

24 or

25 (v) adding, changing or eliminating the par value of  
26 any class or series of shares if the par value of that  
27 class or series does not have any substantive effect  
28 under the terms of that or any other class or series of  
29 shares;

30 (3) (i) the corporation has only one class or series of



1       voting shares outstanding;

2           (ii) the corporation does not have any class or  
3       series of shares outstanding that is:

4                   (A) convertible into those voting shares;

5                   (B) junior in any way to those voting shares; or

6                   (C) entitled to participate on any basis in  
7       distributions with those voting shares; and

8           (iii) the amendment is effective solely to  
9       accomplish one of the following purposes with respect to  
10      those voting shares:

11           [(i)]   (A) in connection with effectuating a stock  
12      dividend of voting shares on the voting shares, to  
13      increase the number of authorized shares [to the extent  
14      necessary to permit the board of directors to effectuate  
15      a stock dividend in the shares of the corporation] of the  
16      voting shares in the same proportion that the voting  
17      shares to be distributed in the stock dividend increase  
18      the issued voting shares; or

19           [(ii) effectuate a]   (B) to split the voting shares  
20      and, if desired, increase the number of authorized shares  
21      of the voting shares or change the par value of [the  
22      authorized] the voting shares, or both, in proportion  
23      thereto;

24           (4) to the extent the amendment has not been approved by  
25      the shareholders, it restates without change all of the  
26      operative provisions of the articles as theretofore amended  
27      or as amended thereby; or

28           (5) the amendment accomplishes any combination of  
29      purposes specified in this subsection.

30   Whenever a provision of this subpart authorizes the board of

1 directors to take any action without the approval of the  
2 shareholders and provides that a statement, certificate, plan or  
3 other document relating to such action shall be filed in the  
4 Department of State and shall operate as an amendment of the  
5 articles, the board upon taking such action may, in lieu of  
6 filing the statement, certificate, plan or other document, amend  
7 the articles under this subsection without the approval of the  
8 shareholders to reflect the taking of such action. An amendment  
9 of articles under this subsection shall be deemed adopted by the  
10 corporation when it has been adopted by the board of directors  
11 pursuant to section 1912 (relating to proposal of amendments).

12 \* \* \*

13 (f) Definition.--As used in this section, the term "voting  
14 shares" has the meaning specified in section 2552 (relating to  
15 definitions).

16 § 1922. Plan of merger or consolidation.

17 (a) Preparation of plan.--A plan of merger or consolidation,  
18 as the case may be, shall be prepared, setting forth:

19 \* \* \*

20 (5) Such other provisions as are deemed desirable.

21 [Any of the terms of the plan may be made dependent upon facts  
22 ascertainable outside of the plan if the manner in which the  
23 facts will operate upon the terms of the plan is set forth in  
24 the plan.]

25 (b) Post-adoption amendment.--A plan of merger or  
26 consolidation may contain a provision that the boards of  
27 directors of the constituent corporations may amend the plan at  
28 any time prior to its effective date, except that an amendment  
29 made subsequent to the adoption of the plan by the shareholders  
30 of any constituent domestic business corporation shall not

1 change:

2 (1) The amount or kind of shares, obligations, cash,  
3 property or rights to be received in exchange for or on  
4 conversion of all or any of the shares of the constituent  
5 domestic business corporation adversely to the holders of  
6 those shares.

7 (2) Any [term] provision of the articles of the  
8 surviving or new corporation [to be effected by] as it is to  
9 be in effect immediately following consummation of the merger  
10 or consolidation, except provisions that may be amended  
11 without the approval of the shareholders under section  
12 1914(c)(2) (relating to adoption of amendments).

13 (3) Any of the other terms and conditions of the plan if  
14 the change would adversely affect the holders of any shares  
15 of the constituent domestic business corporation.

16 (c) Proposal.--[Every] Except where the approval of the  
17 board of directors is unnecessary under this subchapter, every  
18 merger or consolidation shall be proposed in the case of each  
19 domestic business corporation by the adoption by the board of  
20 directors of a resolution approving the plan of merger or  
21 consolidation. Except where the approval of the shareholders is  
22 unnecessary under this subchapter, the board of directors shall  
23 direct that the plan be submitted to a vote of the shareholders  
24 entitled to vote thereon at a regular or special meeting of the  
25 shareholders.

26 \* \* \*

27 (e) Reference to outside facts.--Any of the terms of a plan  
28 of merger or consolidation may be made dependent upon facts  
29 ascertainable outside of the plan if the manner in which the  
30 facts will operate upon the terms of the plan is set forth in

1 the plan. Such facts may include, without limitation, actions or  
2 events within the control of or determinations made by a party  
3 to the plan or a representative of a party to the plan.

4 § 1923. Notice of meeting of shareholders.

5 (a) General rule.--Written notice of the meeting of  
6 shareholders that will act on the proposed plan shall be given  
7 to each shareholder of record, whether or not entitled to vote  
8 thereon, of each domestic business corporation that is a party  
9 to the merger or consolidation. There shall be included in, or  
10 enclosed with, the notice a copy of the proposed plan or a  
11 summary thereof and, if Subchapter D of Chapter 15 (relating to  
12 dissenters rights) is applicable to the holders of shares of any  
13 class or series, a copy of that subchapter and of section 1930  
14 (relating to dissenters rights) shall be furnished to the  
15 holders of shares of that class or series. The notice shall  
16 state that a copy of the bylaws of the surviving or new  
17 corporation will be furnished to any shareholder on request and  
18 without cost.

19 \* \* \*

20 § 1924. Adoption of plan.

21 \* \* \*

22 (b) Adoption by board of directors.--

23 (1) Unless otherwise required by its bylaws, a plan of  
24 merger or consolidation shall not require the approval of the  
25 shareholders of a constituent domestic business corporation  
26 if:

27 \* \* \*

28 (ii) immediately prior to the adoption of the plan  
29 and at all times thereafter prior to its effective date,  
30 another corporation that is a party to the [merger or

consolidation] plan owns directly or indirectly 80% or more of the outstanding shares of each class of the constituent corporation; or

\* \* \*

(3) If a merger or consolidation of a subsidiary corporation with a parent corporation is effected pursuant to paragraph (1)(ii), the plan of merger or consolidation shall be deemed adopted by the subsidiary corporation when it has been adopted by the board of the parent corporation and neither approval of the plan by the board of directors of the subsidiary corporation nor execution of articles of merger or consolidation by the subsidiary corporation shall [not] be necessary.

(4) (i) Unless other required by its bylaws, a plan of merger or consolidation providing for the merger or consolidation of a domestic business corporation (referred to in this paragraph as the "constituent corporation") with or into a single indirect wholly owned subsidiary (referred to in this paragraph as the "subsidiary corporation") of the constituent corporation shall not require the approval of the shareholders of either the constituent corporation or the subsidiary corporation if all of the provisions of this paragraph are satisfied.

(ii) A merger or consolidation under this paragraph shall satisfy the following conditions:

(A) The constituent corporation and the subsidiary corporation are the only parties to the merger or consolidation, other than the resulting corporation, if any, in a consolidation (the

1           corporation that survives or results from the merger  
2           or consolidation is referred to in this paragraph as  
3           the "resulting subsidiary").

4           (B) Each share or fraction of a share of the  
5           capital stock of the constituent corporation  
6           outstanding immediately prior to the effective time  
7           of the merger or consolidation is converted in the  
8           merger or consolidation into a share or equal  
9           fraction of a share of capital stock of a holding  
10          company having the same designations, rights, powers  
11          and preferences and the qualifications, limitations  
12          and restrictions as the share of stock of the  
13          constituent corporation being converted in the merger  
14          or consolidation.

15          (C) The holding company and the resulting  
16          subsidiary are each domestic business corporations.

17          (D) Immediately following the effective time of  
18          the merger or consolidation, the articles of  
19          incorporation and bylaws of the holding company are  
20          identical to the articles of incorporation and bylaws  
21          of the constituent corporation immediately before the  
22          effective time of the merger or consolidation, except  
23          for changes that could be made without shareholder  
24          approval under section 1914(c) (relating to adoption  
25          by board of directors).

26          (E) Immediately following the effective time of  
27          the merger or consolidation, the resulting subsidiary  
28          is a direct or indirect wholly owned subsidiary of  
29          the holding company.

30          (F) The directors of the constituent corporation

1           become or remain the directors of the holding company  
2           upon the effective time of the merger or  
3           consolidation.

4           (G) The board of directors of the constituent  
5           corporation has made a good faith determination that  
6           the shareholders of the constituent corporation will  
7           not recognize gain or loss for United States Federal  
8           Income Tax purposes.

9           (iii) As used in this paragraph only, the term  
10          "holding company" means a corporation that, from its  
11          incorporation until consummation of the merger or  
12          consolidation governed by this paragraph, was at all  
13          times a direct wholly owned subsidiary of the constituent  
14          corporation and whose capital stock is issued in the  
15          merger or consolidation.

16          (iv) If the holding company is a registered  
17          corporation, the shares of the holding company issued in  
18          connection with the merger or consolidation shall be  
19          deemed to have been acquired at the time that the shares  
20          of the constituent corporation converted in the merger or  
21          consolidation were acquired.

22          (5) A plan of merger or consolidation adopted by the  
23          board of directors under this subsection without the approval  
24          of the shareholders shall not, by itself, create or impair  
25          any rights or obligations on the part of any person under  
26          section 2538 (relating to approval of transactions with  
27          interested shareholders) or under Subchapters E (relating to  
28          control transactions), F (relating to business combinations),  
29          G (relating to control-share acquisitions), H (relating to  
30          disgorgement by certain controlling shareholders following

1 attempts to acquire control), I (relating to severance  
2 compensation for employees terminated following certain  
3 control-share acquisitions) and J (relating to business  
4 combination transactions - labor contracts) of Chapter 25,  
5 nor shall it change the standard of care applicable to the  
6 directors under Subchapter B of Chapter 17 (relating to  
7 fiduciary duty).

8 \* \* \*

9 § 1929. Effect of merger or consolidation.

10 \* \* \*

11 (b) Property rights.--All the property, real, personal and  
12 mixed, and franchises of each of the corporations parties to the  
13 merger or consolidation, and all debts due on whatever account  
14 to any of them, including subscriptions for shares and other  
15 choses in action belonging to any of them, shall be deemed to be  
16 [transferred to and] vested in and shall belong to the surviving  
17 or new corporation, as the case may be, without further action,  
18 and the title to any real estate, or any interest therein,  
19 vested in any of the corporations shall not revert or be in any  
20 way impaired by reason of the merger or consolidation. The  
21 surviving or new corporation shall thenceforth be responsible  
22 for all the liabilities of each of the corporations so merged or  
23 consolidated. Liens upon the property of the merging or  
24 consolidating corporations shall not be impaired by the merger  
25 or consolidation and any claim existing or action or proceeding  
26 pending by or against any of the corporations may be prosecuted  
27 to judgment as if the merger or consolidation had not taken  
28 place or the surviving or new corporation may be proceeded  
29 against or substituted in its place.

30 \* \* \*



1 § 1930. Dissenters rights.

2 \* \* \*

3 (b) Plans adopted by directors only.--Except as otherwise  
4 provided pursuant to section 1571(c) (relating to grant of  
5 optional dissenters rights), Subchapter D of Chapter 15 shall  
6 not apply to any of the shares of a corporation that is a party  
7 to a merger or consolidation pursuant to section 1924(b)(1)(i)  
8 or (4) (relating to adoption by board of directors).

9 \* \* \*

10 § 1931. Share exchanges.

11 (a) General rule.--All the outstanding shares of one or more  
12 classes or series of a domestic business corporation, designated  
13 in this section as the exchanging corporation, may, in the  
14 manner provided in this section, be acquired by any person,  
15 designated in this section as the acquiring person, through an  
16 exchange of all the shares pursuant to a plan of exchange. The  
17 plan of exchange may also provide for the conversion of any  
18 other shares of the exchanging corporation into shares, other  
19 securities or obligations of any person or cash, property or  
20 rights. The procedure authorized by this section shall not be  
21 deemed to limit the power of any person to acquire all or part  
22 of the shares or other securities of any class or series of a  
23 corporation through a voluntary exchange or otherwise by  
24 agreement with the holders of the shares or other securities.

25 (b) Plan of exchange.--A plan of exchange shall be prepared,  
26 setting forth:

27 (1) The terms and conditions of the exchange.

28 (2) The manner and basis of exchanging or converting the  
29 shares of the exchanging corporation into shares or other  
30 securities or obligations of the acquiring person, and, if

1 any of the shares of the exchanging corporation are not to be  
2 exchanged or converted solely into shares or other securities  
3 or obligations of the acquiring person, the shares or other  
4 securities or obligations of any other person or cash,  
5 property or rights that the holders of the shares of the  
6 exchanging corporation are to receive in exchange for, or  
7 upon conversion of, the shares and the surrender of any  
8 certificates evidencing them, which securities or  
9 obligations, if any, of any other person or cash, property  
10 and rights may be in addition to or in lieu of the shares or  
11 other securities or obligations of the acquiring person.

12 (3) Any changes desired to be made in the articles of  
13 the exchanging corporation, which may include a restatement  
14 of the articles.

15 (4) Any provisions desired providing special treatment  
16 of shares held by any shareholder or group of shareholders as  
17 authorized by, and subject to the provisions of, section 1906  
18 (relating to special treatment of holders of shares of same  
19 class or series). Notwithstanding subsection (a), a plan that  
20 provides special treatment may affect less than all of the  
21 outstanding shares of a class or series.

22 (5) Such other provisions as are deemed desirable.  
23 [Any of the terms of the plan may be made dependent upon facts  
24 ascertainable outside of the plan if the manner in which the  
25 facts will operate upon the terms of the plan is set forth in  
26 the plan.]

27 (c) Proposal and adoption.--The plan of exchange shall be  
28 proposed and adopted and may be amended after its adoption and  
29 terminated by the exchanging corporation in the manner provided  
30 by this subchapter for the proposal, adoption, amendment and

1 termination of a plan of merger except section 1924(b) (relating  
2 to adoption by board of directors). There shall be included in,  
3 or enclosed with, the notice of the meeting of shareholders to  
4 act on the plan a copy or a summary of the plan and, if  
5 Subchapter D of Chapter 15 (relating to dissenters rights) is  
6 applicable, a copy of the subchapter and of subsection (d). The  
7 holders of any class of shares to be [acquired] exchanged or  
8 converted pursuant to the plan of exchange shall be entitled to  
9 vote as a class on the plan if they would have been entitled to  
10 vote on a plan of merger that affects the class in substantially  
11 the same manner as the plan of exchange.

12 (d) Dissenters rights in share exchanges.--Any holder of  
13 shares that are to be [acquired] exchanged or converted pursuant  
14 to a plan of exchange who objects to the plan and complies with  
15 the provisions of Subchapter D of Chapter 15 shall be entitled  
16 to the rights and remedies of dissenting shareholders therein  
17 provided, if any. See section 1906(c) (relating to dissenter  
18 rights upon special treatment).

19 (e) Articles of exchange.--Upon adoption of a plan of  
20 exchange, as provided in this section, articles of exchange  
21 shall be executed by the exchanging corporation and shall set  
22 forth:

23 (1) The name and, subject to section 109 (relating to  
24 name of commercial registered office provider in lieu of  
25 registered address), the location of the registered office,  
26 including street and number, if any, of the exchanging  
27 corporation.

28 (2) If the plan is to be effective on a specified date,  
29 the hour, if any, and the month, day and year of the  
30 effective date.

1           (3) The manner in which the plan was adopted by the  
2       exchanging corporation.

3           (4) Except as provided in section 1901 (relating to  
4       omission of certain provisions from filed plans), the plan of  
5       exchange.

6       The articles of exchange shall be filed in the Department of  
7       State. See [section] sections 134 (relating to docketing  
8       statement) and 135 (relating to requirements to be met by filed  
9       documents.

10       \* \* \*

11       (i) Reference to outside facts.--Any of the terms of a plan  
12       of exchange may be made dependent upon facts ascertainable  
13       outside of the plan if the manner in which the facts will  
14       operate upon the terms of the plan is set forth in the plan.  
15       Such facts may include, without limitation, actions or events  
16       within the control of or determinations made by a party to the  
17       plan or a representative of a party to the plan.

18       § 1932. Voluntary transfer of corporate assets.

19       \* \* \*

20       (b) Shareholder approval required.--

21       (1) A sale, lease, exchange or other disposition of all,  
22       or substantially all, the property and assets, with or  
23       without the goodwill, of a business corporation, if not made  
24       pursuant to subsection (a) or (d) or to section 1551  
25       (relating to distributions to shareholders) or Subchapter D  
26       (relating to division), may be made only pursuant to a plan  
27       of asset transfer[.] in the manner provided in this  
28       subsection. A corporation selling, leasing or otherwise  
29       disposing of all, or substantially all, its property and  
30       assets is referred to in this subsection and in subsection

1     (c) as the "transferring corporation."

2           (2) The property or assets of a direct or indirect  
3     subsidiary corporation that is controlled by a parent  
4     corporation shall also be deemed the property or assets of  
5     the parent corporation for the purposes of this subsection  
6     and of subsection (c). A merger or consolidation to which  
7     such a subsidiary corporation is a party and in which a third  
8     party acquires direct or indirect ownership of the property  
9     or assets of the subsidiary corporation constitutes an "other  
10    disposition" of the property or assets of the parent  
11    corporation within the meaning of that term as used in this  
12    section.

13           (3) The plan of asset transfer shall set forth the terms  
14    and conditions of the sale, lease, exchange or other  
15    disposition or may authorize the board of directors to fix  
16    any or all of the terms and conditions, including the  
17    consideration to be received by the corporation therefor. The  
18    plan may provide for the distribution to the shareholders of  
19    some or all of the consideration to be received by the  
20    corporation, including provisions for special treatment of  
21    shares held by any shareholder or group of shareholders as  
22    authorized by, and subject to the provisions of, section 1906  
23    (relating to special treatment of holders of shares of same  
24    class or series). It shall not be necessary for the person  
25    acquiring the property or assets of the transferring  
26    corporation to be a party to the plan. Any of the terms of  
27    the plan may be made dependent upon facts ascertainable  
28    outside of the plan if the manner in which the facts will  
29    operate upon the terms of the plan is set forth in the plan.  
30    Such facts may include, without limitation, actions or events

1 within the control of or determinations made by the  
2 corporation or a representative of the corporation.

3 (4) The plan of asset transfer shall be proposed and  
4 adopted, and may be amended after its adoption and  
5 terminated, by [a business] the transferring corporation in  
6 the manner provided in this subchapter for the proposal,  
7 adoption, amendment and termination of a plan of merger,  
8 except section 1924(b) (relating to adoption by board of  
9 directors). The procedures of this subchapter shall not be  
10 applicable to the person acquiring the property or assets of  
11 the transferring corporation. There shall be included in, or  
12 enclosed with, the notice of the meeting of the shareholders  
13 of the transferring corporation to act on the plan a copy or  
14 a summary of the plan and, if Subchapter D of Chapter 15  
15 (relating to dissenters rights) is applicable, a copy of the  
16 subchapter and of subsection (c).

17 (5) In order to make effective the plan of asset  
18 transfer so adopted, it shall not be necessary to file any  
19 articles or other documents in the Department of State.

20 (c) Dissenters rights in asset transfers.--

21 (1) If a shareholder of a transferring corporation that  
22 adopts a plan of asset transfer objects to the plan and  
23 complies with Subchapter D of Chapter 15, the shareholder  
24 shall be entitled to the rights and remedies of dissenting  
25 shareholders therein provided, if any.

26 (2) Paragraph (1) shall not apply to a sale pursuant to  
27 an order of court having jurisdiction in the premises or a  
28 sale [for money on terms requiring] pursuant to a plan of  
29 asset transfer that requires that all or substantially all of  
30 the net proceeds of sale be distributed to the shareholders

1 in accordance with their respective interests within one year  
2 after the date of sale or to a liquidating trust.

3 \* \* \*

4 § 1952. Proposal and adoption of plan of division.

5 (a) Preparation of plan.--A plan of division shall be  
6 prepared, setting forth:

7 (1) The terms and conditions of the division, including  
8 the manner and basis of:

9 (i) The reclassification of the shares of the  
10 surviving corporation, if there be one, and, if any of  
11 the shares of the dividing corporation are not to be  
12 converted solely into shares or other securities or  
13 obligations of one or more of the resulting corporations,  
14 the shares or other securities or obligations of any  
15 other person, or cash, property or rights that the  
16 holders of such shares are to receive in exchange for or  
17 upon conversion of such shares, and the surrender of any  
18 certificates evidencing them, which securities or  
19 obligations, if any, of any other person or cash,  
20 property or rights may be in addition to or in lieu of  
21 shares or other securities or obligations of one or more  
22 of the resulting corporations.

23 (ii) The disposition of the shares and other  
24 securities or obligations, if any, of the new corporation  
25 or corporations resulting from the division.

26 (2) A statement that the dividing corporation will, or  
27 will not, survive the division.

28 (3) Any changes desired to be made in the articles of  
29 the surviving corporation, if there be one, including a  
30 restatement of the articles.

1 (4) The articles of incorporation required by subsection  
2 (b).

3 (5) Any provisions desired providing special treatment  
4 of shares held by any shareholder or group of shareholders as  
5 authorized by, and subject to the provisions of, section 1906  
6 (relating to special treatment of holders of shares of same  
7 class or series).

8 (6) Such other provisions as are deemed desirable.  
9 [Any of the terms of the plan may be made dependent upon facts  
10 ascertainable outside of the plan if the manner in which the  
11 facts will operate upon the terms of the plan is set forth in  
12 the plan.]

13 \* \* \*

14 (g) [Action by] Rights of holders of indebtedness.--[Unless  
15 otherwise provided by an indenture or other contract by which  
16 the dividing corporation is bound, a plan of division shall not  
17 require the approval of the holders of any debt securities or  
18 other obligations of the dividing corporation or of any  
19 representative of the holders, if the transfer of assets  
20 effected by the division, if effected by means of a sale, lease,  
21 exchange or other disposition, and any related distribution,  
22 would not require the approval of the holders or representatives  
23 thereof.] If any debt securities, notes or similar evidences of  
24 indebtedness for money borrowed, whether secured or unsecured,  
25 indentures or other contracts were issued, incurred or executed  
26 by the dividing corporation before (the Legislative Reference  
27 Bureau shall insert here the effective date of the amendments of  
28 this section) and have not been amended subsequent to that date,  
29 the liability of the dividing corporation thereunder shall not  
30 be affected by the division nor shall the rights of the obligees



1 thereunder be impaired by the division, and each of the  
2 resulting corporations may be proceeded against or substituted  
3 in place of the dividing corporation as joint and several  
4 obligors on such liability, regardless of any provision of the  
5 plan of division apportioning the liabilities of the dividing  
6 corporations.

7 \* \* \*

8 (i) Reference to outside facts.--Any of the terms of a plan  
9 of division may be made dependent upon facts ascertainable  
10 outside of the plan if the manner in which the facts will  
11 operate upon the terms of the plan is set forth in the plan.  
12 Such facts may include, without limitation, actions or events  
13 within the control of or determinations made by the dividing  
14 corporation or a representative of the dividing corporation.

15 § 1953. Division without shareholder approval.

16 (a) General rule.--Unless otherwise restricted by its bylaws  
17 or required by section 1952(f) (relating to action by holders of  
18 preferred or special shares), a plan of division that does not  
19 alter the state of incorporation of a business corporation,  
20 provide for special treatment nor amend in any respect the  
21 provisions of its articles (except amendments which under  
22 section 1914(c) (relating to adoption by board of directors) may  
23 be made without shareholder action) shall not require the  
24 approval of the shareholders of the corporation if:

25 (1) the dividing corporation has only one class of  
26 shares outstanding and the shares and other securities, if  
27 any, of each corporation resulting from the plan are  
28 distributed pro rata to the shareholders of the dividing  
29 corporation;

30 (2) the dividing corporation survives the division and

1 all the shares and other securities and obligations, if any,  
2 of all new corporations resulting from the plan are owned  
3 solely by the surviving corporation; or

4 (3) the [transfers] allocation of assets among the  
5 resulting corporations effected by the division, if effected  
6 by means of a sale, lease, exchange or other disposition,  
7 would not require the approval of shareholders under section  
8 1932(b) (relating to shareholder approval required).

9 (b) Limitation.--A plan of division adopted by the board of  
10 directors under this section without the approval of the  
11 shareholders shall not, by itself, create or impair any rights  
12 or obligations on the part of any person under section 2538  
13 (relating to approval of transactions with interested  
14 shareholders) or under Subchapters E (relating to control  
15 transactions), F (relating to business combinations), G  
16 (relating to control-share acquisitions), H (relating to  
17 disgorgement by certain controlling shareholders following  
18 attempts to acquire control), I (relating to severance  
19 compensation for employees terminated following certain control-  
20 share acquisitions) and J (relating to business combination  
21 transactions - labor contracts) of Chapter 25, nor shall it  
22 change the standard of care applicable to the directors under  
23 Subchapter B of Chapter 17 (relating to fiduciary duty).

24 § 1955. Filing of articles of division.

25 (a) General rule.--The articles of division, and the  
26 certificates or statement, if any, required by section 139  
27 (relating to tax clearance of certain fundamental transactions)  
28 shall be filed in the Department of State.

29 (b) Cross [reference] references.--See [section] sections  
30 134 (relating to docketing statement) and 135 (relating to

1 requirements to be met by filed documents).

2 § 1957. Effect of division.

3 \* \* \*

4 (b) Property rights; allocations of assets and  
5 liabilities.--

6 (1) (i) All the property, real, personal and mixed, and  
7 franchises of the dividing corporation, and all debts due  
8 on whatever account to it, including subscriptions for  
9 shares and other choses in action belonging to it, shall  
10 (except as otherwise provided in paragraph (2)), to the  
11 extent [transfers] allocations of assets are contemplated  
12 by the plan of division, be deemed without further action  
13 to be [transferred] allocated to and vested in the  
14 resulting corporations on such a manner and basis and  
15 with such effect as is specified in the plan, or per  
16 capita among the resulting corporations, as tenants in  
17 common, if no specification is made in the plan, and the  
18 title to any real estate, or interest therein, vested in  
19 any of the corporations shall not revert or be in any way  
20 impaired by reason of the division.

21 (ii) Upon the division becoming effective, the  
22 resulting corporations shall each thenceforth be  
23 responsible as separate and distinct corporations only  
24 for such liabilities as each corporation may undertake or  
25 incur in its own name but shall be liable for the  
26 liabilities of the dividing corporation in the manner and  
27 on the basis provided in subparagraphs (iv) and (v).

28 (iii) Liens upon the property of the dividing  
29 corporation shall not be impaired by the division.

30 (iv) [One] To the extent allocations of liabilities

1       are contemplated by the plan of division, the liabilities  
2       of the dividing corporation shall be deemed without  
3       further action to be allocated to and become the  
4       liabilities of the resulting corporations on such a  
5       manner and basis and with such effect as is specified in  
6       the plan; and one or more, but less than all, of the  
7       resulting corporations shall be free of the liabilities  
8       of the dividing corporation to the extent, if any,  
9       specified in the plan, if in either case:

10                (A) no fraud [of corporate creditors, or of] on  
11                minority shareholders or shareholders without voting  
12                rights or violation of law shall be effected thereby,  
13                and [if applicable provisions of law are complied  
14                with.]

15                (B) the plan does not constitute a fraudulent  
16                transfer under 12 Pa.C.S. Ch. 51 (relating to  
17                fraudulent transfers).

18                (v) If the conditions in subparagraph (iv) for  
19                freeing one or more of the resulting corporations from  
20                the liabilities of the dividing corporation, or for  
21                allocating some or all of the liabilities of the dividing  
22                corporation, are not satisfied, the liabilities of the  
23                dividing corporation as to which those conditions are not  
24                satisfied shall not be affected by the division nor shall  
25                the rights of creditors [thereof or of any person dealing  
26                with the corporation] thereunder be impaired by the  
27                division and any claim existing or action or proceeding  
28                pending by or against the corporation with respect to  
29                those liabilities may be prosecuted to judgment as if the  
30                division had not taken place, or the resulting

1 corporations may be proceeded against or substituted in  
2 [its] place of the dividing corporation as joint and  
3 several obligors on [such liability] those liabilities,  
4 regardless of any provision of the plan of division  
5 apportioning the liabilities of the dividing corporation.

6 (vi) The conditions in subparagraph (iv) for freeing  
7 one or more of the resulting corporations from the  
8 liabilities of the dividing corporation and for  
9 allocating some or all of the liabilities of the dividing  
10 corporation shall be conclusively deemed to have been  
11 satisfied if the plan of division has been approved by  
12 the Department of Banking, the Insurance Department or  
13 the Pennsylvania Public Utility Commission in a final  
14 order issued after (the Legislative Reference Bureau  
15 shall insert here the effective date of the amendments of  
16 this section) that has become not subject to further  
17 appeal.

18 (2) (i) The [transfer] allocation of any fee or  
19 freehold interest or leasehold having a remaining term of  
20 30 years or more in any tract or parcel of real property  
21 situate in this Commonwealth owned by a dividing  
22 corporation (including property owned by a foreign  
23 business corporation dividing solely under the law of  
24 another jurisdiction) to a new corporation resulting from  
25 the division shall not be effective until one of the  
26 following documents is filed in the office for the  
27 recording of deeds of the county, or each of them, in  
28 which the tract or parcel is situated:

29 (A) A deed, lease or other instrument of  
30 confirmation describing the tract or parcel.

1 (B) A duly executed duplicate original copy of  
2 the articles of division.

3 (C) A copy of the articles of division certified  
4 by the Department of State.

5 (D) A declaration of acquisition setting forth  
6 the value of real estate holdings in such county of  
7 the corporation as an acquired company.

8 (ii) The provisions of 75 Pa.C.S. § 1114 (relating  
9 to transfer of vehicle by operation of law) shall not be  
10 applicable to [a transfer] an allocation of ownership of  
11 any motor vehicle, trailer or semitrailer [from a  
12 dividing corporation] to a new corporation under this  
13 section or under a similar law of any other jurisdiction  
14 but any such [transfer] allocation shall be effective  
15 only upon compliance with the requirements of 75 Pa.C.S.  
16 § 1116 (relating to issuance of new certificate following  
17 transfer).

18 (3) It shall not be necessary for a plan of division to  
19 list each individual asset or liability of the dividing  
20 corporation to be allocated to a new corporation so long as  
21 those assets and liabilities are described in a reasonable  
22 manner.

23 (4) Each new corporation shall hold any assets and  
24 liabilities allocated to it as the successor to the dividing  
25 corporation, and those assets and liabilities shall not be  
26 deemed to have been assigned to the new corporation in any  
27 manner, whether directly or indirectly or by operation of  
28 law.

29 \* \* \*

30 (h) Conflict of laws.--It is the intent of the General

1 Assembly that:

2       (1) The effect of a division of a domestic business  
3 corporation shall be governed solely by the laws of this  
4 Commonwealth and any other jurisdiction under the laws of  
5 which any of the resulting corporations is incorporated.

6       (2) The effect of a division on the assets and  
7 liabilities of the dividing corporation shall be governed  
8 solely by the laws of this Commonwealth and any other  
9 jurisdiction under the laws of which any of the resulting  
10 corporations is incorporated.

11       (3) The validity of any allocations of assets or  
12 liabilities by a plan of division of a domestic business  
13 corporation, regardless of whether or not any of the new  
14 corporations is a foreign business corporation, shall be  
15 governed solely by the laws of this Commonwealth.

16       (4) In addition to the express provisions of this  
17 subsection, this subchapter shall otherwise generally be  
18 granted the protection of full faith and credit under the  
19 Constitution of the United States.

20 § 1962. Proposal and adoption of plan of conversion.

21       (a) Preparation of plan.--A plan of conversion shall be  
22 prepared, setting forth:

23           (1) The terms and conditions of the conversion.

24           (2) A restatement of the articles of the resulting  
25 corporation, which articles shall comply with the  
26 requirements of this part relating to nonprofit corporations.

27           (3) Any provisions desired providing special treatment  
28 of shares held by any shareholder or group of shareholders as  
29 authorized by, and subject to the provisions of, section 1906  
30 (relating to special treatment of holders of shares of same

1 class or series).

2 (4) Such other provisions as are deemed desirable.

3 [Any of the terms of the plan may be made dependent upon facts  
4 ascertainable outside of the plan if the manner in which the  
5 facts will operate upon the terms of the plan is set forth in  
6 the plan.]

7 \* \* \*

8 (d) Reference to outside facts.--Any of the terms of a plan  
9 of conversion may be made dependent upon facts ascertainable  
10 outside of the plan if the manner in which the facts will  
11 operate upon the terms of the plan is set forth in the plan.  
12 Such facts may include, without limitation, actions or events  
13 within the control of or determinations made by the corporation  
14 or a representative of the corporation.

15 § 1972. Proposal of voluntary dissolution.

16 (a) General rule.--Any business corporation that has  
17 commenced business may dissolve voluntarily in the manner  
18 provided in this subchapter and wind up its affairs in the  
19 manner provided in section 1975 (relating to predissolution  
20 provision for liabilities) or Subchapter H (relating to  
21 postdissolution provision for liabilities). Voluntary  
22 dissolution shall be proposed by the adoption by the board of  
23 directors of a resolution recommending that the corporation be  
24 dissolved voluntarily. The resolution shall contain a statement  
25 either that the dissolution shall proceed under section 1975 or  
26 that the dissolution shall proceed under Subchapter H. The  
27 resolution may set forth provisions for the distribution to  
28 shareholders of any surplus remaining after paying or providing  
29 for all liabilities of the corporation, including provisions for  
30 special treatment of shares held by any shareholder or group of



1 shareholders as authorized by, and subject to the provisions of,  
2 section 1906 (relating to special treatment of holders of shares  
3 of same class or series).

4 (b) Submission to shareholders.--The board of directors  
5 shall direct that the [question of] resolution recommending  
6 dissolution be submitted to a vote of the shareholders of the  
7 corporation entitled to vote thereon at a regular or special  
8 meeting of the shareholders.

9 \* \* \*

10 § 1973. Notice of meeting of shareholders.

11 (a) General rule.--Written notice of the meeting of  
12 shareholders that will consider the [advisability of voluntarily  
13 dissolving a] resolution recommending dissolution of the  
14 business corporation shall be given to each shareholder of  
15 record entitled to vote thereon and the purpose shall be  
16 included in the notice of the meeting.

17 \* \* \*

18 § 1975. Predissolution provision for liabilities.

19 (a) Powers of board.--The board of directors of a business  
20 corporation that has elected to proceed under this section shall  
21 have full power to wind up and settle the affairs of [a  
22 business] the corporation in accordance with this section prior  
23 to filing articles of dissolution in accordance with section  
24 1977 (relating to articles of dissolution).

25 (b) Notice to creditors and taxing authorities.--After the  
26 approval by the shareholders of the [proposal] resolution  
27 recommending that the corporation dissolve voluntarily, the  
28 corporation shall immediately cause notice of the winding up  
29 proceedings to be officially published and to be mailed by  
30 certified or registered mail to each known creditor and claimant

1 and to each municipal corporation in which [its registered  
2 office or principal] it has a place of business in this  
3 Commonwealth [is located].

4 (c) Winding up and distribution.--The corporation shall, as  
5 speedily as possible, proceed to collect all sums due it,  
6 convert into cash all corporate assets the conversion of which  
7 into cash is required to discharge its liabilities and, out of  
8 the assets of the corporation, discharge or make adequate  
9 provision for the discharge of all liabilities of the  
10 corporation, according to their respective priorities. Any  
11 surplus remaining after paying or providing for all liabilities  
12 of the corporation shall be distributed to the shareholders  
13 according to their respective rights and preferences. See  
14 section 1972(a) (relating to proposal of voluntary dissolution).  
15 § 1976. Judicial supervision of proceedings.

16 A business corporation that has elected to proceed under  
17 section 1975 (relating to predissolution provision for  
18 liabilities), at any time during the winding up proceedings, may  
19 apply to the court to have the proceedings continued under the  
20 supervision of the court and thereafter the proceedings shall  
21 continue under the supervision of the court as provided in  
22 Subchapter G (relating to involuntary liquidation and  
23 dissolution).

24 § 1977. Articles of dissolution.

25 (a) General rule.--Articles of dissolution and the  
26 certificates or statement required by section 139 (relating to  
27 tax clearance of certain fundamental transactions) shall be  
28 filed in the Department of State when:

29 (1) all liabilities of the business corporation have  
30 been discharged, or adequate provision has been made

1       therefor, in accordance with section 1975 (relating to  
2       predissolution provision for liabilities), and all of the  
3       remaining assets of the corporation have been distributed as  
4       provided in section 1975 (or in case its assets are not  
5       sufficient to discharge its liabilities, when all the assets  
6       have been fairly and equitably applied, as far as they will  
7       go, to the payment of such liabilities); or

8       (2) an election to proceed under Subchapter H (relating  
9       to postdissolution provision for liabilities) has been made.

10   [See section 134 (relating to docketing statement).]

11       (b) Contents of articles.--The articles of dissolution shall  
12   be executed by the corporation and shall set forth:

13       \* \* \*

14       (5) A statement that:

15           (i) [that] all liabilities of the corporation have  
16       been discharged or that adequate provision has been made  
17       therefor; [or]

18           (ii) [that] the assets of the corporation are not  
19       sufficient to discharge its liabilities, and that all the  
20       assets of the corporation have been fairly and equitably  
21       applied, as far as they will go, to the payment of such  
22       liabilities[. An election by]; or

23           (iii) the corporation has elected to proceed under  
24       Subchapter H [shall constitute the making of adequate  
25       provision for the liabilities of the corporation,  
26       including any judgment or decree that may be obtained  
27       against the corporation in any pending action or  
28       proceeding].

29       \* \* \*

30       (7) [A] In the case of a corporation that has not

1 elected to proceed under Subchapter H, a statement that no  
2 actions or proceedings are pending against the corporation in  
3 any court, or that adequate provision has been made for the  
4 satisfaction of any judgment or decree that may be obtained  
5 against the corporation in each pending action or proceeding.

6 (8) [A] In the case of a corporation that has not  
7 elected to proceed under Subchapter H, a statement that  
8 notice of the winding-up proceedings of the corporation was  
9 mailed by certified or registered mail to each known creditor  
10 and claimant and to each municipal corporation in which the  
11 [registered office or principal place of business of the]  
12 corporation has a place of business in this Commonwealth [is  
13 located].

14 \* \* \*

15 (d) Cross references.--See sections 134 (relating to  
16 docketing statement) and 135 (relating to requirements to be met  
17 by filed documents).

18 § 1978. Winding up of corporation after dissolution.

19 \* \* \*

20 (b) Standard of care of directors and officers.--The  
21 dissolution of the corporation shall not subject its directors  
22 or officers to standards of conduct different from those  
23 prescribed by or pursuant to Chapter 17 (relating to officers,  
24 directors and shareholders). Directors of a dissolved  
25 corporation who have complied with section 1975 (relating to  
26 predissolution provision for liabilities) or Subchapter H  
27 (relating to postdissolution provision for liabilities) shall  
28 not be personally liable to the creditors of the dissolved  
29 corporation.

30 § 1979. Survival of remedies and rights after dissolution.

1 (a) General rule.--The dissolution of a business  
2 corporation, either under this subchapter or under Subchapter G  
3 (relating to involuntary liquidation and dissolution) or by  
4 expiration of its period of duration or otherwise, shall not  
5 eliminate nor impair any remedy available to or against the  
6 corporation or its directors, officers or shareholders for any  
7 right or claim existing, or liability incurred, prior to the  
8 dissolution, if an action or proceeding thereon is brought on  
9 behalf of:

10 (1) the corporation within the time otherwise limited by  
11 law; or

12 (2) any other person before or within two years after  
13 the date of the dissolution or within the time otherwise  
14 limited by this subpart or other provision of law, whichever  
15 is less. See sections 1987 (relating to proof of claims),  
16 1993 (relating to acceptance or rejection of matured claims)  
17 and 1994 (relating to disposition of unmatured claims).

18 [The actions or proceedings may be prosecuted against and  
19 defended by the corporation in its corporate name.]

20 \* \* \*

21 (e) Conduct of actions.--An action or proceeding may be  
22 prosecuted against and defended by a dissolved corporation in  
23 its corporate name.

24 § 1980. Dissolution by domestication.

25 Whenever a domestic business corporation has domesticated  
26 itself under the laws of another jurisdiction by action similar  
27 to that provided by section 4161 (relating to domestication) and  
28 has authorized that action by the vote required by this  
29 subchapter for the approval of a proposal that the corporation  
30 dissolve voluntarily, the corporation may surrender its charter

1 under the laws of this Commonwealth by filing in the Department  
2 of State articles of dissolution under this subchapter  
3 containing the statement specified by section [1977(a)(1)]  
4 1977(b)(1) through (4) (relating to [preparation of articles].]  
5 articles of dissolution). If the corporation as domesticated in  
6 the other jurisdiction qualifies to do business in this  
7 Commonwealth either prior to or simultaneously with the filing  
8 of the articles of dissolution under this section, the  
9 corporation shall not be required to file with the articles of  
10 dissolution the tax clearance certificates that would otherwise  
11 be required by section 139 (relating to tax clearance of certain  
12 fundamental transactions).

13 § 1991.1. Authority of board of directors.

14 (a) General rule.--The board of directors of a business  
15 corporation that has elected to proceed under this subchapter  
16 shall have full power to wind up and settle the affairs of the  
17 corporation in accordance with this subchapter both prior to and  
18 after the filing of articles of dissolution in accordance with  
19 section 1977 (relating to articles of dissolution).

20 (b) Winding up.--The corporation shall, as speedily as  
21 possible, proceed to comply with the requirements of this  
22 subchapter while simultaneously collecting all sums due it and  
23 converting into cash all corporate assets, the conversion of  
24 which into cash is required to make adequate provision for its  
25 liabilities.

26 § 1992. Notice to claimants.

27 \* \* \*

28 (c) Publication and service of notices.--

29 (1) The notices required by this section shall be  
30 officially published at least once a week for two consecutive

1 weeks and, in the case of a corporation having \$10,000,000 or  
2 more in total assets at the time of its dissolution, at least  
3 once in all editions of a daily newspaper with a national  
4 circulation.

5 (2) Concurrently with or preceding the publication, the  
6 corporation or successor entity shall send a copy of the  
7 notice by certified or registered mail, return receipt  
8 requested, to each:

9 (i) known creditor or claimant;

10 (ii) holder of a claim described in subsection (b);

11 and

12 (iii) municipal corporation in which [the registered  
13 office or principal] a place of business of the  
14 corporation in this Commonwealth was located at the time  
15 of filing the articles of dissolution in the department.

16 \* \* \*

17 § 1997. Payments and distributions.

18 \* \* \*

19 (b) Disposition.--The claims and liabilities shall be paid  
20 in full and any provision for payment shall be made in full if  
21 there are sufficient assets. If there are insufficient assets,  
22 the claims and liabilities shall be paid or provided for in  
23 order of their priority, and, among claims of equal priority,  
24 ratably to the extent of funds legally available therefor. Any  
25 remaining assets shall be distributed to the shareholders of the  
26 corporation according to their respective rights and  
27 preferences, except that the distribution shall not be made less  
28 than 60 days after the last notice of rejection, if any, was  
29 given under section 1993 (relating to acceptance or rejection of  
30 matured claims). See section 1972(a) (relating to proposal of

1 voluntary dissolution).

2 \* \* \*

3 [(d) Liability of directors.--Directors of a dissolved  
4 corporation or governing persons of a successor entity that has  
5 complied with this section shall not be personally liable to the  
6 claimants of the dissolved corporation.]

7 § 2902. Definitions and index of definitions.

8 (a) Definitions.--The following words and phrases when used  
9 in this chapter shall have the meanings given to them in this  
10 section unless the context clearly indicates otherwise:

11 "Disqualified person." [A] The term "disqualified person" as  
12 used in this chapter means a licensed person who for any reason  
13 is or becomes legally disqualified (temporarily or permanently)  
14 to render the same professional services that the particular  
15 professional corporation of which he is an officer, director,  
16 shareholder or employee is or was rendering.

17 ["Licensed person." Any natural person who is duly licensed  
18 or admitted to practice his profession by a court, department,  
19 board, commission or other agency of this Commonwealth or  
20 another jurisdiction to render a professional service that is or  
21 will be rendered by the professional corporation of which he is,  
22 or intends to become, an officer, director, shareholder,  
23 employee or agent.

24 "Profession." Includes the performance of any type of  
25 personal service to the public that requires as a condition  
26 precedent to the performance of the service the obtaining of a  
27 license or admission to practice or other legal authorization,  
28 including all personal services that prior to the enactment of  
29 the act of July 9, 1970 (P.L.461, No.160), known as the  
30 Professional Corporation Law, could not lawfully be rendered by



1 means of a corporation. By way of example, and without limiting  
2 the generality of the foregoing, the term includes for the  
3 purposes of this chapter personal services rendered as an  
4 architect, chiropractor, dentist, funeral director, osteopath,  
5 podiatrist, physician, professional engineer, veterinarian,  
6 certified public accountant or surgeon and, except as otherwise  
7 prescribed by general rules, an attorney at law. Except as  
8 otherwise expressly provided by law, the definition specified in  
9 this paragraph shall be applicable to this chapter only and  
10 shall not affect the interpretation of any other statute or any  
11 local zoning ordinance or other official document heretofore or  
12 hereafter enacted or promulgated.

13 "Professional services." Any type of services that may be  
14 rendered by the member of any profession within the purview of  
15 his profession.]

16 (b) Index of other definitions.--Other definitions applying  
17 to this chapter and the sections in which they appear are:

18 "Licensed person." Section 102 (relating to definitions).

19 "Profession." Section 102.

20 "Professional services." Section 102.

21 § 2904. Election of an existing business corporation to become  
22 a professional corporation.

23 \* \* \*

24 (b) Procedure.--The amendment shall be adopted in accordance  
25 with the requirements of Subchapter B of Chapter 19 (relating to  
26 amendment of articles) [except that the amendment must be  
27 approved by the unanimous consent of all shareholders of the  
28 corporation regardless of any limitations on voting rights  
29 stated in the articles or bylaws]. If any shareholder of a  
30 business corporation that proposes to amend its articles to

1 become a professional corporation objects to that amendment and  
2 complies with the provisions of Subchapter D of Chapter 15  
3 (relating to dissenters rights), the shareholder shall be  
4 entitled to the rights and remedies of dissenting shareholders  
5 therein provided, if any.

6 § 2922. Stated purposes.

7 \* \* \*

8 (b) Additional powers.--A professional corporation may be [a  
9 partner in or a shareholder] an equity owner of a partnership  
10 [or], limited liability company, corporation or other  
11 association engaged in the business of rendering the  
12 professional service or services for which the professional  
13 corporation was incorporated.

14 § 2923. Issuance and retention of shares.

15 (a) General rule.--Except as otherwise provided by a  
16 statute, rule or regulation applicable to a particular  
17 profession, all of the ultimate beneficial owners of shares in a  
18 professional corporation [may be beneficially owned, directly or  
19 indirectly, only by one or more] shall be licensed persons and  
20 any issuance or transfer of shares in violation of this  
21 restriction shall be void. A shareholder of a professional  
22 corporation shall not enter into a voting trust, proxy or any  
23 other arrangement vesting another person (other than [another  
24 licensed] a person who is qualified to be a direct or indirect  
25 shareholder of the same corporation) with the authority to  
26 exercise the voting power of any or all of his shares, and any  
27 such purported voting trust, proxy or other arrangement shall be  
28 void.

29 (b) Ownership by estate.--Unless a lesser period of time is  
30 provided in a bylaw [of the corporation] adopted by the

1 shareholders or in a written agreement among the shareholders of  
2 the corporation, the estate of a deceased shareholder may  
3 continue to hold shares of the professional corporation for a  
4 reasonable period of administration of the estate, but the  
5 personal representative of the estate shall not by reason of the  
6 retention of shares be authorized to participate in any  
7 decisions concerning the rendering of professional service.

8 \* \* \*

9 § 3133. Notice of meetings of members of mutual insurance  
10 companies.

11 (a) General rule.--Unless otherwise restricted in the  
12 bylaws, persons authorized or required to give notice of an  
13 annual meeting of members of a mutual insurance company for the  
14 election of directors or of a meeting of members of a mutual  
15 insurance company called for the purpose of considering [an]  
16 amendment of the articles or bylaws, or both, of the corporation  
17 may, in lieu of any written notice of meeting of members  
18 required to be given by this subpart, give notice of such  
19 meeting by causing notice of such meeting to be officially  
20 published. Such notice shall be published each week for at  
21 least:

22 (1) Three successive weeks, in the case of an annual  
23 meeting.

24 (2) Four successive weeks, in the case of a meeting to  
25 consider [an] amendment of the articles or bylaws, or both.

26 \* \* \*

27 § 4123. Requirements for foreign corporation names.

28 \* \* \*

29 (b) Exceptions.--

30 (1) The provisions of section 1303(b) (relating to

duplicate use of names) shall not prevent the issuance of a certificate of authority to a foreign business corporation setting forth a name that is [confusingly similar to] not distinguishable upon the records of the department from the name of any other domestic or foreign corporation for profit or corporation not-for-profit, [or of any domestic or foreign limited partnership that has filed a certificate or qualified under Chapter 85 (relating to limited partnerships) or corresponding provisions of prior law,] or of any corporation or other association then registered under 54 Pa.C.S. Ch. 5 (relating to corporate and other association names) or to any name reserved or registered as provided in this part, if the foreign business corporation applying for a certificate of authority files in the department [one of the following:

(i) A] a resolution of its board of directors adopting a fictitious name for use in transacting business in this Commonwealth, which fictitious name is [not confusingly similar to] distinguishable upon the records of the department from the name of the other corporation or other association or [to] from any name reserved or registered as provided in this part and that is otherwise available for use by a domestic business corporation.

[(ii) The written consent of the other corporation or other association or holder of a reserved or registered name to use the same or confusingly similar name and one or more words are added to make the name applied for distinguishable from the other name.]

\* \* \*

§ 4146. Provisions applicable to all foreign corporations.

1 The following provisions of this subpart shall, except as  
2 otherwise provided in this section, be applicable to every  
3 foreign corporation for profit, whether or not required to  
4 procure a certificate of authority under this chapter:

5 Section 1503 (relating to defense of ultra vires), as to  
6 contracts and conveyances [made in] governed by the laws of  
7 this Commonwealth and conveyances affecting real property  
8 situated in this Commonwealth.

9 Section 1506 (relating to form of execution of  
10 instruments), as to instruments or other documents [made or  
11 to be performed in] governed by the laws of this Commonwealth  
12 or affecting real property situated in this Commonwealth.

13 Section 1510 (relating to certain specifically authorized  
14 debt terms), as to obligations (as defined in the section)  
15 [executed or effected in] governed by the laws of this  
16 Commonwealth or affecting real property situated in this  
17 Commonwealth.

18 \* \* \*

19 § 4161. Domestication.

20 \* \* \*

21 (b) Articles of domestication.--The articles of  
22 domestication shall be executed by the corporation and shall set  
23 forth in the English language:

24 (1) The name of the corporation. If the name is in a  
25 foreign language, it shall be set forth in Roman letters or  
26 characters or Arabic or Roman numerals. If the name is one  
27 that is rendered unavailable by any provision of section  
28 1303(b) or (c) (relating to corporate name), the corporation  
29 shall adopt, in accordance with any procedures for changing  
30 the name of the corporation that are applicable prior to the

domestication of the corporation, and shall set forth in the  
articles of domestication an available name.

\* \* \*

(c) Cross [reference] references.--See [section] sections  
134 (relating to docketing statement) and 135 (relating to  
requirements to be met by filed documents).

§ 4162. Effect of domestication.

(a) General rule.--As a domestic business corporation, the  
domesticated corporation shall no longer be a foreign business  
corporation for the purposes of this subpart and shall [have],  
instead, be a domestic business corporation with all the powers  
and privileges and [be subject to] all the duties and  
limitations granted and imposed upon domestic business  
corporations. [The property, franchises, debts, liens, estates,  
taxes, penalties and public accounts due the Commonwealth shall  
continue to be vested in and imposed upon the corporation to the  
same extent as if it were the successor by merger of the  
domesticating corporation with and into a domestic business  
corporation under Subchapter C of Chapter 19 (relating to  
merger, consolidation, share exchanges and sale of assets).] In  
all other respects, the domesticated corporation shall be deemed  
to be the same corporation as it was prior to the domestication  
without any change in or effect on its existence. Without  
limiting the generality of the previous sentence, the  
domestication shall not be deemed to have affected in any way:

(1) the right and title of the corporation in and to its  
assets, property, franchises, estates and choses in action;

(2) the liability of the corporation for its debts,  
obligations, penalties and public accounts due the  
Commonwealth;

1       (3) any liens or other encumbrances on the property or  
2       assets of the corporation; or

3       (4) any contract, license or other agreement to which  
4       the corporation is a party or under which it has any rights  
5       or obligations.

6       (b) Reclassification of shares.--The shares of the  
7 domesticated corporation shall be unaffected by the  
8 domestication except to the extent, if any, reclassified in the  
9 articles of domestication.

10 § 5303. Corporate name.

11       \* \* \*

12       (b) Duplicate use of names.--The corporate name shall [not  
13 be the same as or confusingly similar to] be distinguishable  
14 upon the records of the Department of State from:

15           (1) The name of any other domestic corporation for  
16 profit or not-for-profit which is either in existence or for  
17 which articles of incorporation have been filed but have not  
18 yet become effective, or of any foreign corporation for  
19 profit or not-for-profit which is either authorized to do  
20 business in this Commonwealth or for which an application for  
21 a certificate of authority has been filed but which has not  
22 yet become effective, [or of any domestic or foreign limited  
23 partnership that has filed in the Department of State a  
24 certificate or qualified under Chapter 85 (relating to  
25 limited partnerships) or under corresponding provisions of  
26 prior law,] or the name of any association registered at any  
27 time under 54 Pa.C.S. Ch. 5 (relating to corporate and other  
28 association names), unless[:

29           (i) where the name is the same or confusingly  
30 similar,] the other association:

1           [(A)] (i) has stated that it is about to change  
2           its name, or to cease to do business, or is being  
3           wound up, or is a foreign association about to  
4           withdraw from doing business in this Commonwealth,  
5           and the statement and [the] a written consent [of the  
6           other association] to the adoption of the name  
7           executed by the other association is filed in the  
8           Department of State;

9           [(B)] (ii) has filed with the Department of  
10          Revenue a certificate of out of existence, or has  
11          failed for a period of three successive years to file  
12          with the Department of Revenue a report or return  
13          required by law and the fact of such failure has been  
14          certified by the Department of Revenue to the  
15          Department of State;

16          [(C)] (iii) has abandoned its name under the  
17          laws of its jurisdiction of incorporation, by  
18          amendment, merger, consolidation, division,  
19          expiration, dissolution or otherwise, without its  
20          name being adopted by a successor in a merger,  
21          consolidation, division or otherwise, and an official  
22          record of that fact, certified as provided by 42  
23          Pa.C.S. § 5328 (relating to proof of official  
24          records), is presented by any person to the  
25          department; or

26          [(D)] (iv) has had the registration of its name  
27          under 54 Pa.C.S. Ch. 5 terminated and, if the  
28          termination was effected by operation of 54 Pa.C.S. §  
29          504 (relating to effect of failure to make decennial  
30          filings), the application for the use of the name is



1 accompanied by a verified statement stating that at  
2 least 30 days' written notice of intention to  
3 appropriate the name was given to the delinquent  
4 association at its [registered office] last known  
5 place of business and that, after diligent search by  
6 the affiant, the affiant believes the association to  
7 be out of existence.]; or

8 (ii) where the name is confusingly similar, the  
9 consent of the other association to the adoption of the  
10 name is filed in the Department of State.

11 The consent of the association shall be evidenced by a  
12 statement to that effect executed by the association.]

13 \* \* \*

14 (e) Remedies for violation of section.--The use of a name in  
15 violation of this section shall not vitiate or otherwise affect  
16 the corporate existence but any court having jurisdiction may  
17 enjoin the corporation from using or continuing to use a name in  
18 violation of this section, upon the application of:

19 (1) the Attorney General, acting on his own motion or at  
20 the instance of any administrative department, board or  
21 commission of this Commonwealth; or

22 (2) any person adversely affected.];  
23 may enjoin the corporation from using or continuing to use a  
24 name in violation of this section.]

25 (f) Cross references.--See sections 135(e) (relating to  
26 distinguishable names) and 5106(b)(2) (relating to limited  
27 uniform application of subpart).

28 § 5304. Required name changes by senior corporations.

29 (a) Adoption of new name upon reactivation.--Where a  
30 corporate name is made available on the basis that the

1 corporation or [nonprofit unincorporated] other association  
2 [which] that formerly registered [such] the name has failed to  
3 file with the Department of Revenue [or in the Department of  
4 State] a report or a return required by law or where the  
5 corporation or [nonprofit unincorporated] other association has  
6 filed with the Department of Revenue a certificate of out of  
7 existence, [such] the corporation or other association shall  
8 cease to have by virtue of its prior registration any right to  
9 the use of [such] the name[, and such]. The corporation or other  
10 association, upon withdrawal of the certificate of out of  
11 existence or upon the removal of its delinquency in the filing  
12 of the required reports or returns, shall make inquiry with the  
13 Department of State with regard to the availability of its  
14 name[, and] if [such] the name has been made available to  
15 another domestic or foreign corporation for profit or not-for-  
16 profit or other association by virtue of [the above] these  
17 conditions, shall adopt a new name in accordance with law before  
18 resuming its activities.

19 (b) Enforcement of undertaking to release name.--If a  
20 corporation has used a name [the same as, or deceptively similar  
21 to,] that is not distinguishable upon the records of the  
22 Department of State from the name of another corporation or  
23 [nonprofit unincorporated] other association as permitted by  
24 section 5303(b)(1)[(i)] (relating to duplicate use of names) and  
25 the other corporation or [nonprofit unincorporated] other  
26 association continues to use its name in this Commonwealth and  
27 does not change its name, cease to do business, be wound up, or  
28 withdraw as it proposed to do in its consent or change its name  
29 as required by subsection (a), any court [of competent] having  
30 jurisdiction may enjoin the other corporation or other

1 association from continuing to use its name or a name that is  
2 not distinguishable therefrom, upon the application of:

3       (1) the Attorney General, acting on his own motion or at  
4 the instance of any administrative department, board or  
5 commission of this Commonwealth[,]; or

6       (2) upon the application of any person adversely  
7 affected[, may enjoin the other corporation or association  
8 from continuing to use its name or a name deceptively similar  
9 thereto].

10 § 5311. Filing of statement of summary of record by certain  
11 corporations.

12       (a) General rule.--Where any of the [valid] charter  
13 documents of a nonprofit corporation are not on file in the  
14 Department of State or there is an error in any such document as  
15 transferred to the department pursuant to section 140 (relating  
16 to custody and management of orphan corporate and business  
17 records), and the corporation desires to file any document in  
18 the department under any other provision of this [article]  
19 subpart or the corporation desires to secure from the department  
20 any certificate to the effect that the corporation is a  
21 corporation duly incorporated and existing under the laws of  
22 this Commonwealth or a certified copy of the articles of the  
23 corporation or the corporation desires to correct the text of  
24 its charter documents as on file in the department, the  
25 corporation shall file in the department a statement of summary  
26 of record which shall be executed by the corporation and shall  
27 set forth:

28       (1) The name of the corporation and, subject to section  
29 109 (relating to name of commercial registered office  
30 provides in lieu of registered address), the location,

1 including street and number, if any, of its registered  
2 office.

3 (2) The statute by or under which the corporation was  
4 incorporated.

5 (3) The name under which, the manner in which and the  
6 date on which the corporation was originally incorporated,  
7 including the date when and the place where the original  
8 articles were recorded.

9 (4) The place or places, including volume and page  
10 numbers or their equivalent, where the documents  
11 [constituting the currently effective articles are] that are  
12 not on file in the department or that require correction in  
13 the records of the department were originally filed or  
14 recorded, the date or dates of each [such] filing or  
15 recording and the correct text of [such currently effective  
16 articles] the documents. The information specified in this  
17 paragraph may be omitted in a statement of summary of record  
18 that is delivered to the department contemporaneously with  
19 amended and restated articles of the corporation filed under  
20 this subpart.

21 [(5) Each name by which the corporation was known, if  
22 any, other than its original name and its current name, and  
23 the date or dates on which each change of name of the  
24 corporation became effective.

25 A corporation shall be required to make only one filing under  
26 this subsection.]

27 (b) Validation of prior defects in incorporation.--Upon the  
28 filing of a statement by a corporation under this section or the  
29 transfer to the department of the records relating to a  
30 corporation pursuant to section 140, the corporation [named in

1 the statement] shall be deemed to be a validly subsisting  
2 corporation to the same extent as if it had been duly  
3 incorporated and was existing under this subpart and the  
4 department shall so certify regardless of any absence of or  
5 defect in the prior proceedings relating to incorporation.

6 (c) Cross [reference] references.--See [section] sections  
7 134 (relating to docketing statement), 135 (relating to  
8 requirements to be met by filed documents) and 5106(b)(2)  
9 (relating to uniform application of subpart).

10 § 5503. Defense of ultra vires.

11 (a) General rule.--[No] A limitation upon the business,  
12 [purpose or] purposes[, ] or powers of a nonprofit corporation,  
13 expressed or implied in its articles or bylaws or implied by  
14 law, shall not be asserted in order to defend any action at law  
15 or in equity between the corporation and a third person, or  
16 between a member and a third person, involving any contract to  
17 which the corporation is a party or any right of property or any  
18 alleged liability of [whatsoever] whatever nature[; but such],  
19 but the limitation may be asserted:

20 (1) In an action by a member against the corporation to  
21 enjoin the doing of unauthorized acts or the transaction or  
22 continuation of unauthorized business. If the unauthorized  
23 acts or business sought to be enjoined are being transacted  
24 pursuant to any contract to which the corporation is a party,  
25 the court may, if all of the parties to the contract are  
26 parties to the action[, ] and if it deems [such action] the  
27 result to be equitable, set aside and enjoin the performance  
28 of [such] the contract, and in so doing shall allow to the  
29 corporation, or to the other parties to the contract, as the  
30 case may be, such compensation as may be [equitable]

1     appropriate for the loss or damage sustained by any of them  
2     from the action of the court in setting aside and enjoining  
3     the performance of [such] the contract, but anticipated  
4     profits to be derived from the performance of the contract  
5     shall not be awarded by the court as a loss or damage  
6     sustained.

7           (2) In any action by or in the right of the corporation  
8     to procure a judgment in its favor against an incumbent or  
9     former officer, director or member of an other body of the  
10    corporation for loss or damage due to his unauthorized acts.

11          (3) In a proceeding by the Commonwealth under section  
12    503 (relating to actions to revoke corporate franchises)[,]  
13    or in a proceeding by the Commonwealth to enjoin the  
14    corporation from the doing of unauthorized or unlawful  
15    business.

16    (b) Conveyances of property by or to a corporation.--[No] A  
17    conveyance or transfer by or to a nonprofit corporation of  
18    property, real or personal, of any kind or description, shall  
19    not be invalid or fail because in making [such] the conveyance  
20    or transfer, or in acquiring the property, real or personal,  
21    [the board of directors or other body or any of the officers]  
22    any representative of the corporation acting within the scope of  
23    the actual or apparent authority given to [them] him by the  
24    [board of directors or other body, have] corporation has  
25    exceeded any of the purposes or powers of the corporation.

26    (c) [Nonqualified foreign corporations.--The provisions of  
27    this section shall extend to contracts and conveyances made by  
28    nonqualified foreign corporations in this Commonwealth and to  
29    conveyances by nonqualified foreign corporations of real  
30    property situated in this Commonwealth.] Cross reference.--See

1 section 6146 (relating to provisions applicable to all foreign  
2 corporations).

3 § 5505. Persons bound by bylaws.

4 Except as otherwise provided by section 5713 (relating to  
5 personal liability of directors) or any similar provision of  
6 law, bylaws of a nonprofit corporation shall operate only as  
7 regulations among the members, directors, members of an other  
8 body and officers of the corporation, and shall not affect  
9 contracts or other dealings with other persons, unless those  
10 persons have actual knowledge of the bylaws.

11 § 5506. Form of execution of instruments.

12 (a) General rule.--Any form of execution provided in the  
13 articles or bylaws to the contrary notwithstanding, any note,  
14 mortgage, evidence of indebtedness, contract[, ] or other  
15 [instrument in writing] document, or any assignment or  
16 endorsement thereof, executed or entered into between any  
17 nonprofit corporation and any other person, when signed by one  
18 or more officers or agents having actual or apparent authority  
19 to sign it, or by the president or vice-president and secretary  
20 or assistant secretary or treasurer or assistant treasurer of  
21 [such] the corporation, shall be held to have been properly  
22 executed for and in behalf of the corporation.

23 (b) Seal unnecessary.--[Except as otherwise required by  
24 statute, the] The affixation of the corporate seal shall not be  
25 necessary to the valid execution, assignment or endorsement by a  
26 corporation of any instrument [in writing] or other document.

27 (c) [Nonqualified foreign corporations.--The provisions of  
28 this section shall extend to instruments in writing made or to  
29 be performed in this Commonwealth by a nonqualified foreign  
30 corporation and to instruments executed by nonqualified foreign

1 corporations affecting real property situated in this  
2 Commonwealth.] Cross reference.--See section 6146 (relating to  
3 provisions applicable to all foreign corporations).

4 § 5508. Corporate records; inspection by members.

5 (a) Required records.--Every nonprofit corporation shall  
6 keep [an original or duplicate record] minutes of the  
7 proceedings of the members [and], the directors[, and [of] any  
8 other body [exercising powers or performing duties which under  
9 this article may be exercised or performed by such other body,  
10 the original or a copy of its bylaws, including all amendments  
11 thereto to date, certified by the secretary of the corporation],  
12 and [an original or] a [duplicate] membership register, giving  
13 the names [of the members, and showing their respective] and  
14 addresses of all members and the class and other details of the  
15 membership of each. [Every such] The corporation shall also keep  
16 appropriate, complete and accurate books or records of account.  
17 The records provided for in this subsection shall be kept at  
18 [either] any of the following locations:

19 (1) the registered office of the corporation in this  
20 Commonwealth [or at its];

21 (2) the principal place of business wherever  
22 situated[.]; or

23 (3) any actual business office of the corporation.

24 (b) Right of inspection by a member.--Every member shall,  
25 upon written verified demand [under oath] stating the purpose  
26 thereof, have a right to examine, in person or by agent or  
27 attorney, during the usual hours for business for any proper  
28 purpose, the membership register, books and records of account,  
29 and records of the proceedings of the members, directors and  
30 [such] any other body, and to make copies or extracts therefrom.



1 A proper purpose shall mean a purpose reasonably related to the  
2 interest of [such] the person as a member. In every instance  
3 where an attorney or other agent [shall be] is the person who  
4 seeks the right [to] of inspection, the demand [under oath]  
5 shall be accompanied by a verified power of attorney or [such]  
6 other writing [which] that authorizes the attorney or other  
7 agent to so act on behalf of the member. The demand [under oath]  
8 shall be directed to the corporation:

9       (1) at its registered office in this Commonwealth [or];

10       (2) at its principal place of business wherever  
11       situated[.]; or

12       (3) in care of the person in charge of an actual  
13       business office of the corporation.

14       (c) Proceedings for the enforcement of inspection by a  
15 member.--If the corporation, or an officer or agent thereof,  
16 refuses to permit an inspection sought by a member or attorney  
17 or other agent acting for the member pursuant to subsection (b)  
18 [of this section] or does not reply to the demand within five  
19 business days after the demand has been made, the member may  
20 apply to the court for an order to compel [such] the inspection.  
21 The court shall determine whether or not the person seeking  
22 inspection is entitled to the inspection sought. The court may  
23 summarily order the corporation to permit the member to inspect  
24 the membership register and the other books and records of the  
25 corporation and to make copies or extracts therefrom; or the  
26 court may order the corporation to furnish to the member a list  
27 of its members as of a specific date on condition that the  
28 member first pay to the corporation the reasonable cost of  
29 obtaining and furnishing [such] the list and on such other  
30 conditions as the court deems appropriate. Where the member

1 seeks to inspect the books and records of the corporation, other  
2 than its membership register or list of members, he shall first  
3 establish:

4 (1) that he has complied with the provisions of this  
5 section respecting the form and manner of making demand for  
6 inspection of such document; and

7 (2) that the inspection he seeks is for a proper  
8 purpose.

9 Where the member seeks to inspect the membership register or  
10 list of members of the corporation and he has complied with the  
11 provisions of this section respecting the form and manner of  
12 making demand for inspection of [such] the documents, the burden  
13 of proof shall be upon the corporation to establish that the  
14 inspection he seeks is for an improper purpose. The court may,  
15 in its discretion, prescribe any limitations or conditions with  
16 reference to the inspection, or award such other or further  
17 relief as the court [may deem] deems just and proper. The court  
18 may order books, documents and records, pertinent extracts  
19 therefrom, or duly authenticated copies thereof, to be brought  
20 [within] into this Commonwealth and kept in this Commonwealth  
21 upon such terms and conditions as the order may prescribe.

22 (d) Cross references.--See sections 107 (relating to form of  
23 records) and 5512 (relating to informational rights of a  
24 director).

25 § 5510. [(Reserved).] Certain specifically authorized debt  
26 terms.

27 (a) Interest rates.--A nonprofit corporation shall not plead  
28 or set up usury, or the taking of more than the lawful rate of  
29 interest, or the taking of any finance, service or default  
30 charge in excess of any maximum rate therefor provided or

1 prescribed by law, as a defense to any action or proceeding  
2 brought against it to recover damages on, or to enforce payment  
3 of, or to enforce any other remedy on, any obligation executed  
4 or effected by the corporation.

5 (b) Yield maintenance premiums.--A prepayment premium  
6 determined by reference to the approximate spread between the  
7 yield at issuance, or at the date of amendment of any of the  
8 terms, of an obligation of a corporation and the yield at or  
9 about such date of an interest rate index of independent  
10 significance and contingent upon a change in the ownership of or  
11 memberships in the corporation or a default by or other change  
12 in the condition or prospects of the corporation or any  
13 affiliate of the corporation shall be deemed liquidated damages  
14 and shall not constitute a penalty.

15 (c) Definitions.--As used in this section, the following  
16 words and phrases shall have the meanings given to them in this  
17 subsection:

18 "Affiliate." An affiliate or associate as defined in section  
19 2552 (relating to definitions).

20 "Obligation." Includes an installment sale contract.

21 (d) Cross reference.--See section 6146 (relating to  
22 provisions applicable to all foreign corporations).

23 § 5512. Informational rights of a director.

24 (a) General rule.--To the extent reasonably related to the  
25 performance of the duties of the director, including those  
26 arising from service as a member of a committee of the board of  
27 directors, a director of a nonprofit corporation is entitled:

28 (1) in person or by any attorney or other agent, at any  
29 reasonable time, to inspect and copy corporate books, records  
30 and documents and, in addition, to inspect, and receive

information regarding, the assets, liabilities and operations of the corporation and any subsidiaries of the corporation incorporated or otherwise organized or created under the laws of this Commonwealth that are controlled directly or indirectly by the corporation; and

(2) to demand that the corporation exercise whatever rights it may have to obtain information regarding any other subsidiaries of the corporation.

(b) Proceedings for the enforcement of inspection by a director.--If the corporation, or an officer or agent thereof, refuses to permit an inspection or obtain or provide information sought by a director or attorney or other agent acting for the director pursuant to subsection (a) or does not reply to the request within two business days after the request has been made, the director may apply to the court for an order to compel the inspection or the obtaining or providing of the information. The court shall summarily order the corporation to permit the requested inspection or to obtain the information unless the corporation establishes that the information to be obtained by the exercise of the right is not reasonably related to the performance of the duties of the director or that the director or the attorney or agent of the director is likely to use the information in a manner that would violate the duty of the director to the corporation. The order of the court may contain provisions protecting the corporation from undue burden or expense and prohibiting the director from using the information in a manner that would violate the duty of the director to the corporation.

(c) Cross references.--See sections 107 (relating to form of records), 5508 (relating to corporate records; inspection by

1 members) and 42 Pa.C.S. § 2503(7) (relating to right of  
2 participants to receive counsel fees).

3 § 5545. Income from corporate activities.

4 (a) General rule.--A nonprofit corporation whose lawful  
5 activities involve among other things the charging of fees or  
6 prices for its services or products, shall have the right to  
7 receive [such] that income and, in so doing, may make [an  
8 incidental] a profit. All [such incidental] profits shall be  
9 applied to the maintenance and operation of the lawful  
10 activities of the corporation, or any of its subordinate units  
11 or of any not-for-profit association to which it is subordinate,  
12 and [in no case] shall otherwise not be divided or distributed  
13 in any manner whatsoever among the members, directors, members  
14 of an other body or officers of the corporation. [As used in  
15 this section the terms fees or prices do not include rates of  
16 contribution, fees or dues levied under an insurance certificate  
17 issued by a fraternal benefit society, so long as the  
18 distribution of profits arising from said fees or prices is  
19 limited to the purposes set forth in this section and section  
20 5551 (relating to dividends prohibited; compensation and certain  
21 payments authorized).]

22 (b) Cross references.--See sections 5511 (relating to  
23 establishment of subordinate units) and 5551(relating to  
24 dividends prohibited; compensation and certain payments  
25 authorized).

26 § 5546. Purchase, sale[, mortgage] and lease of [real]  
27 property.

28 [Except for an industrial development corporation whose  
29 articles or bylaws otherwise provide, no purchase of real  
30 property shall be made by a nonprofit corporation and no

1 corporation shall sell, mortgage, lease away or otherwise  
2 dispose of its real property, unless authorized by the vote of  
3 two-thirds of the members in office of the board of directors or  
4 other body, except that if there are 21 or more directors or  
5 members of such other body, the vote of a majority of the  
6 members in office shall be sufficient. No application to or  
7 confirmation of any court shall be required and, unless  
8 otherwise restricted in the bylaws, no vote or consent of the  
9 members shall be required to make effective such action by the  
10 board or other body. If the real property is subject to a trust  
11 the conveyance away shall be free of trust and the trust shall  
12 be impinged upon the proceeds of such conveyance.] Except as  
13 otherwise provided in this subpart and unless otherwise provided  
14 in the bylaws, no application to or confirmation of any court  
15 shall be required for the purchase by or the sale, lease or  
16 other disposition of the real or personal property, or any part  
17 thereof, of a nonprofit corporation, and, unless otherwise  
18 restricted in section 5930 (relating to voluntary transfer of  
19 corporate assets) or in the bylaws, no vote or consent of the  
20 members shall be required to make effective such action by the  
21 board or other body. If the property is subject to a trust, the  
22 conveyance away shall be free of trust, and the trust shall be  
23 impinged upon the proceeds of the conveyance.

24 § 5547. Authority to take and hold trust property.

25 (a) General rule.--Every nonprofit corporation incorporated  
26 for a charitable purpose or purposes may take, receive and hold  
27 such real and personal property as may be given, devised to[,]  
28 or otherwise vested in [such] the corporation, in trust or  
29 otherwise, for the purpose or purposes set forth in its  
30 articles.

1     (b) Standard of conduct.--The board of directors or other  
2 body of the corporation shall, as trustees of [such] trust  
3 property, be held to the same degree of responsibility and  
4 accountability as if not incorporated, unless:

5         (1) a less degree or a particular degree of  
6 responsibility and accountability is prescribed in the trust  
7 instrument, or [unless]

8         (2) the board of directors or such other body remain  
9 under the control of the members of the corporation or third  
10 persons who retain the right to direct, and do direct, the  
11 actions of the board or other body as to the use of the trust  
12 property from time to time.

13     ~~[(b)]~~ (c) Nondiversion of certain property.--[Property  
14 committed to charitable purposes] Trust property shall not, by  
15 any proceeding under Chapter 59 (relating to fundamental  
16 changes) or otherwise, be diverted from the objects to which it  
17 was donated, granted or devised, unless and until the [board of  
18 directors or other body] corporation obtains from the court an  
19 order under 20 Pa.C.S. Ch. 61 (relating to estates) specifying  
20 the disposition of the property.

21     § 5551. Dividends prohibited; compensation and certain payments  
22             authorized.

23     (a) General rule.--[A] Except as provided in section 5545  
24 (relating to income from corporate activities), a nonprofit  
25 corporation shall not pay dividends or distribute any part of  
26 its net income or profits to its members, directors, members of  
27 an other body or officers. [Nothing herein contained shall  
28 prohibit a fraternal benefit society operating under the  
29 insurance laws of Pennsylvania from paying dividends or refunds  
30 by whatever name known pursuant to the terms of its insurance

1 contracts.] A contribution by a corporation to a not-for-profit  
2 association made on or after February 13, 1973, shall not be  
3 deemed a dividend or distribution for purposes of this subpart.

4 (b) Reasonable compensation for services.--A [nonprofit]  
5 corporation may pay compensation in a reasonable amount to  
6 members, directors, members of an other body or officers for  
7 services rendered.

8 (c) Certain payments authorized.--A [nonprofit] corporation  
9 may confer monetary or other benefits upon members or nonmembers  
10 in conformity with its purposes, may repay capital  
11 contributions, and may redeem its [subvention certificates or  
12 evidences of indebtedness] subventions or obligations, as  
13 authorized by this [article, except when the corporation is  
14 currently insolvent or would thereby be made insolvent or  
15 rendered unable to carry on its corporate purposes, or when the  
16 fair value of the assets of the corporation remaining after such  
17 conferring of benefits, payment or redemption would be  
18 insufficient to meet its liabilities.] subpart unless, after  
19 giving effect thereto, the corporation would be unable to pay  
20 its debts as they become due in the usual course of its  
21 business. A [nonprofit] corporation may make distributions of  
22 cash or property to members upon dissolution or final  
23 liquidation as permitted by this article.

24 § 5552. Liabilities of members.

25 (a) General rule.--[The members of a nonprofit corporation  
26 shall not be personally liable for the debts, liabilities or  
27 obligations of the corporation.] A member of a nonprofit  
28 corporation shall not be liable, solely by reason of being a  
29 member, under an order of a court or in any other manner for a  
30 debt, obligation or liability of the corporation of any kind or



1 for the acts of any member or representative of the corporation.

2 (b) Obligations of member to corporation.--A member shall be  
3 liable to the corporation only to the extent of any unpaid  
4 portion of the capital contributions, membership dues or  
5 assessments which the corporation may have lawfully imposed upon  
6 him, or for any other indebtedness owed by him to the  
7 corporation. No action shall be brought by any creditor of the  
8 corporation to reach and apply any such liability to any debt of  
9 the corporation until after:

10 (1) final judgment [shall have] has been rendered  
11 against the corporation in favor of the creditor and  
12 execution thereon returned unsatisfied[, or the corporation  
13 shall have been adjudged bankrupt, or];

14 (2) a case involving the corporation has been brought  
15 under 11 U.S.C. Ch. 7 (relating to liquidation) and a  
16 distribution has been made and the case closed or a notice of  
17 no assets has been issued; or

18 (3) a receiver [shall have] has been appointed with  
19 power to collect debts, and [which] the receiver, on demand  
20 of a creditor to bring an action thereon, has refused to sue  
21 for [such] the unpaid amount, or the corporation [shall have]  
22 has been dissolved or ceased its activities leaving debts  
23 unpaid.

24 [No such] (c) Action by a creditor.--An action by a creditor  
25 under subsection (b) shall not be brought more than three years  
26 after the happening of [any one of such events.] the first to  
27 occur of the events listed in subsection (b)(1) through (3).

28 § 5709. Conduct of members meeting.

29 (a) Presiding officer.--There shall be a presiding officer  
30 at every meeting of the members. The presiding officer shall be

1 appointed in the manner provided in the bylaws or, in the  
2 absence of such provision, by the board of directors. If the  
3 bylaws are silent on the appointment of the presiding officer  
4 and the board fails to designate a presiding officer, the  
5 president shall be the presiding officer.

6 (b) Authority of the presiding officer.--Except as otherwise  
7 provided in the bylaws, the presiding officer shall determine  
8 the order of business and shall have the authority to establish  
9 rules for the conduct of the meeting.

10 (c) Procedural standard.--Any action by the presiding  
11 officer in adopting rules for, and in conducting, a meeting  
12 shall be fair to the members.

13 (d) Closing of the polls.--The presiding officer shall  
14 announce at the meeting when the polls close for each matter  
15 voted upon. If no announcement is made, the polls shall be  
16 deemed to have closed upon the final adjournment of the meeting.  
17 After the polls close, no ballots, proxies or votes, nor any  
18 revocations or changes thereto, may be accepted.

19 § 5729. Voting rights of directors.

20 (a) General rule.--Unless otherwise provided in a bylaw  
21 adopted by the members, every director of a nonprofit  
22 corporation shall be entitled to one vote. Without limiting the  
23 generality of the foregoing, a bylaw adopted by the members may  
24 provide that a class or other defined group of directors shall  
25 have multiple or fractional voting rights, or no right to vote,  
26 either generally or under specified circumstances.

27 (b) [Multiple and fractional voting.--The requirement of  
28 this article] Application of procedural requirements.--Any  
29 requirement of this subpart for the presence of or vote or other  
30 action by a specified percentage of directors shall be satisfied

1 by the presence of or vote or other action by directors entitled  
2 to cast [such] the specified percentage of the votes [which all]  
3 that all voting directors in office are entitled to cast.

4 § 5731. Executive and other committees of the board.

5 (a) Establishment and powers.--Unless otherwise restricted  
6 in the bylaws:

7 (1) The board of directors may, by resolution adopted by  
8 a majority of the directors in office, establish one or more  
9 committees to consist of one or more directors of the  
10 corporation.

11 (2) Any [such] committee, to the extent provided in the  
12 resolution of the board of directors or in the bylaws, shall  
13 have and may exercise all of the powers and authority of the  
14 board of directors, except that [no such] a committee shall  
15 not have any power or authority as to the following:

16 (i) The submission to members of any action  
17 requiring approval of members under this [article]  
18 subpart.

19 (ii) The creation or filling of vacancies in the  
20 board of directors.

21 (iii) The adoption, amendment or repeal of the  
22 bylaws.

23 (iv) The amendment or repeal of any resolution of  
24 the board that by its terms is amendable or repealable  
25 only by the board.

26 (v) Action on matters committed by the bylaws or a  
27 resolution of the board of directors exclusively to  
28 another committee of the board.

29 [(2)] (3) The board may designate one or more directors  
30 as alternate members of any committee, who may replace any

absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another director to act at the meeting in the place of any [such] absent or disqualified member.

(b) Term.--Each committee of the board shall serve at the pleasure of the board.

§ 5745. Advancing expenses.

Expenses (including attorneys' fees) incurred in defending any action or proceeding referred to in this subchapter may be paid by a nonprofit corporation in advance of the final disposition of the action or proceeding upon receipt of an undertaking by or on behalf of the representative to repay the amount if it is ultimately determined that he is not entitled to be indemnified by the corporation as authorized in this subchapter or otherwise. Except as otherwise provided in the bylaws, advancement of expenses shall be authorized by the board of directors. Section 5728 (relating to interested members, directors or officers; quorum) shall not be applicable to the advancement of expenses under this section.

§ 5748. Application to surviving or new corporations.

[For] (a) General rule.--Except as provided in subsection (b), for the purposes of this subchapter, references to "the corporation" include all constituent corporations absorbed in a consolidation, merger or division, as well as the surviving or new corporations surviving or resulting therefrom, so that any person who is or was a representative of the constituent, surviving or new corporation, or is or was serving at the

1 request of the constituent, surviving or new corporation as a  
2 representative of another domestic or foreign corporation for  
3 profit or not-for-profit, partnership, joint venture, trust or  
4 other enterprise, shall stand in the same position under the  
5 provisions of this subchapter with respect to the surviving or  
6 new corporation as he would if he had served the surviving or  
7 new corporation in the same capacity.

8 (b) Divisions.--Notwithstanding subsection (a), the  
9 obligations of a dividing corporation to indemnify and advance  
10 expenses of its representatives, whether arising under this  
11 subchapter or otherwise, may be allocated in a division in the  
12 same manner and with the same effect as any other liability of  
13 the dividing corporation.

14 § 5758. Voting rights of members.

15 (a) General rule.--Unless otherwise provided in a bylaw  
16 adopted by the members, every member of a nonprofit corporation  
17 shall be entitled to one vote.

18 (b) Procedures.--The manner of voting on any matter,  
19 including changes in the articles or bylaws, may be by ballot,  
20 mail or any reasonable means provided in a bylaw adopted by the  
21 members. If a bylaw adopted by the members provides a fair and  
22 reasonable procedure for the nomination of candidates for any  
23 office, only candidates who have been duly nominated in  
24 accordance therewith shall be eligible for election. Unless  
25 otherwise provided in such a bylaw, in elections for directors,  
26 voting shall be by ballot, and the candidates receiving the  
27 highest number of votes from each class or group of classes, if  
28 any, of members entitled to elect directors separately up to the  
29 number of directors to be elected by such class or group of  
30 classes shall be elected. If at any meeting of members directors

1 of more than one class are to be elected, each class of  
2 directors shall be elected in a separate election.

3 (c) Cumulative voting.--[The members of a nonprofit  
4 corporation shall have the right to cumulate their votes for the  
5 election of directors only if and to the extent a bylaw adopted  
6 by the members so provides.] If a bylaw adopted by the members  
7 so provides, in each election of directors of a nonprofit  
8 corporation every member entitled to vote shall have the right  
9 to multiply the number of votes to which he may be entitled by  
10 the total number of directors to be elected in the same election  
11 by the members or the class of members to which he belongs and  
12 he may cast the whole number of his votes for one candidate or  
13 he may distribute them among any two or more candidates.

14 (d) Sale of votes.--No member shall sell his vote or issue a  
15 proxy for money or anything of value.

16 (e) Voting lists.--Upon request of a member, the books or  
17 records of membership shall be produced at any regular or  
18 special meeting of the corporation. If at any meeting the right  
19 of a person to vote is challenged, the presiding officer shall  
20 require [such] the books or records to be produced as evidence  
21 of the right of the person challenged to vote, and all persons  
22 who appear by [such] the books or records to be members entitled  
23 to vote may vote. See section 6145 (relating to applicability of  
24 certain safeguards to foreign corporations).

25 § 5782. Actions against directors, members of an other body and  
26 officers.

27 (a) General rule.--Except as provided in subsection (b), in  
28 any action or proceeding brought to enforce a secondary right on  
29 the part of one or more members of a nonprofit corporation  
30 against any present or former officer, director or member of an

1 other body of the corporation because the corporation refuses to  
2 enforce rights that may properly be asserted by it, each  
3 plaintiff must aver and it must be made to appear that each  
4 plaintiff was a member of the corporation at the time of the  
5 transaction of which he complains.

6 (b) Exception.--Any member who, except for the provisions of  
7 subsection (a), would be entitled to maintain the action or  
8 proceeding and who does not meet such requirements may,  
9 nevertheless in the discretion of the court, be allowed to  
10 maintain the action or proceeding on preliminary showing to the  
11 court, by application and upon such verified statements and  
12 depositions as may be required by the court, that there is a  
13 strong prima facie case in favor of the claim asserted on behalf  
14 of the corporation and that without the action serious injustice  
15 will result.

16 (c) Security for costs.--In any action or proceeding  
17 instituted or maintained by less than the smaller of 50 members  
18 of any class or 5% of the members of any class of the  
19 corporation, the corporation in whose right the action or  
20 proceeding is brought shall be entitled at any stage of the  
21 proceedings to require the plaintiffs to give security for the  
22 reasonable expenses, including attorney fees, that may be  
23 incurred by it in connection therewith or for which it may  
24 become liable pursuant to section 5743 (relating to mandatory  
25 indemnification), but only insofar as relates to actions by or  
26 in the right of the corporation, to which security the  
27 corporation shall have recourse in such amount as the court  
28 determines upon the termination of the action or proceeding. The  
29 amount of security may, from time to time, be increased or  
30 decreased in the discretion of the court upon showing that the

1 security provided has or may become inadequate or excessive. The  
2 security may be denied or limited in the discretion of the court  
3 upon preliminary showing to the court, by application and upon  
4 such verified statements and depositions as may be required by  
5 the court, establishing prima facie that the requirement of full  
6 or partial security would impose undue hardship on plaintiffs  
7 and serious injustice would result.

8 (d) Cross reference.--See section 6146 (relating to  
9 provisions applicable to all foreign corporations).

10 § 5903. Bankruptcy or insolvency proceedings.

11 (a) General rule.--[Whenever] Unless otherwise provided in  
12 the bylaws, whenever a nonprofit corporation is insolvent or in  
13 financial difficulty, the board of directors may, by resolution  
14 and without the consent of the members, authorize and designate  
15 the officers of the corporation to execute a deed of assignment  
16 for the benefit of creditors, or file a voluntary petition in  
17 bankruptcy, or file an answer consenting to the appointment of a  
18 receiver upon a complaint in the nature of an equity action  
19 filed by creditors or members, or, if insolvent, file an answer  
20 to an involuntary petition in bankruptcy admitting the  
21 insolvency of the corporation and its willingness to be adjudged  
22 a debtor on that ground.

23 (b) Bankruptcy proceedings.--[A] If authorized pursuant to  
24 subsection (a), a nonprofit corporation may participate in  
25 proceedings under and in the manner provided by Title 11 of the  
26 United States Code (relating to bankruptcy) notwithstanding any  
27 contrary provision of its articles or bylaws or this subpart,  
28 other than [section] sections 103 (relating to subordination of  
29 title to regulatory laws) and 5107 (relating to subordination of  
30 subpart to canon law). The corporation shall have full power and



1 authority to put into effect and carry out a plan of  
2 reorganization or arrangement and the decrees and orders of the  
3 court, or judge or referee relative thereto, and may take any  
4 proceeding and do any act provided in the plan or arrangement or  
5 directed by such decrees and orders, without further action by  
6 its directors or members. Such power and authority may be  
7 exercised, and such proceedings and acts may be taken, as may be  
8 directed by such decrees or orders, by the trustees or receivers  
9 of the corporation appointed in the bankruptcy proceedings, or a  
10 majority thereof, or, if none be appointed and acting, by  
11 designated officers of the corporation, or by a master or other  
12 representative appointed by the court or judge or referee, with  
13 the effect as if exercised and taken by unanimous action of the  
14 directors and members of the corporation. Without limiting the  
15 generality or effect of the foregoing, the corporation may:

16 \* \* \*

17 § 5912. Proposal of amendments.

18 (a) General rule.--Every amendment [to] of the articles of a  
19 nonprofit corporation shall be proposed [by]:

20 (1) by the adoption by the board of directors or other  
21 body of a resolution setting forth the proposed amendment;

22 (2) unless otherwise provided in the articles, by  
23 petition of members entitled to cast at least 10% of the  
24 votes [which] that all members are entitled to cast thereon,  
25 setting forth the proposed amendment, which petition shall be  
26 directed to the board of directors and filed with the  
27 secretary of the corporation; or

28 (3) by such other method as may be provided in the  
29 bylaws.

30 [The] (b) Submission to members.--Except where the approval

1 of the members is unnecessary under this subchapter, the board  
2 of directors or other body [or the petitioning members] shall  
3 direct that the proposed amendment be submitted to a vote of the  
4 members entitled to vote thereon at a regular or special meeting  
5 of the members.

6 [(b)] (c) Form of amendment.--[The resolution or petition  
7 shall contain the language of the proposed amendment to the  
8 articles by providing that the articles shall be amended so as  
9 to read as therein set forth in full, or that any provision  
10 thereof be amended so as to read as therein set forth in full,  
11 or that the matter stated in the resolution or petition be added  
12 to or stricken from the articles. The resolution or petition may  
13 set forth the manner and basis of reclassifying the shares of  
14 the corporation.] The resolution or petition shall contain the  
15 language of the proposed amendment of the articles:

16 (1) by setting forth the existing text of the articles  
17 or the provision thereof that is proposed to be amended, with  
18 brackets around language that is to be deleted and  
19 underscoring under language that is to be added; or

20 (2) by providing that the articles shall be amended so  
21 as to read as therein set forth in full, or that any  
22 provision thereof be amended so as to read as therein set  
23 forth in full, or that the matter stated in the resolution or  
24 petition be added to or stricken from the articles.

25 (d) Terms of amendment.--The resolution or petition may set  
26 forth the manner and basis of reclassifying the memberships in  
27 or shares of the corporation. Any of the terms of a plan of  
28 reclassification or other action contained in an amendment may  
29 be made dependent upon facts ascertainable outside of the  
30 amendment if the manner in which the facts will operate upon the

1 terms of the amendment is set forth in the amendment. Such facts  
2 may include, without limitation, actions or events within the  
3 control of or determinations made by the corporation or a  
4 representative of the corporation.

5 § 5922. Plan of merger or consolidation.

6 (a) Preparation of plan.--A plan of merger or consolidation,  
7 as the case may be, shall be prepared, setting forth:

8 (1) The terms and conditions of the merger or  
9 consolidation.

10 [(2) The mode of carrying the merger or consolidation  
11 into effect.

12 (3)] (2) If the surviving or new corporation is or is to  
13 be a domestic nonprofit corporation:

14 (i) any changes desired to be made in the articles,  
15 which may include a restatement of the articles in the  
16 case of a merger; or

17 (ii) in the case of a consolidation, all of the  
18 statements required by this [article] subpart to be set  
19 forth in restated articles.

20 [(4)] (3) Such other [details and] provisions as are  
21 deemed desirable.

22 (b) Post-adoption amendment.--A plan of merger or  
23 consolidation may contain a provision that the boards of  
24 directors or other bodies of the constituent corporations may  
25 amend the plan at any time prior to its effective date, except  
26 that an amendment made subsequent to the adoption of the plan by  
27 the members of any constituent corporation shall not change:

28 (1) The term of memberships or the amount or kind of  
29 securities, obligations, cash, property or rights to be  
30 received in exchange for or on conversion of all or any of

1 the memberships in the constituent corporation.

2 (2) Any term of the articles of the surviving or new  
3 corporation to be effected by the merger or consolidation.

4 (3) Any of the terms and conditions of the plan if the  
5 change would adversely affect the members of the constituent  
6 corporation.

7 [(b)] (c) Proposal.--Every merger or consolidation shall be  
8 proposed in the case of each domestic nonprofit corporation  
9 [by]:

10 (1) by the adoption by the board of directors or other  
11 body of a resolution approving the plan of merger or  
12 consolidation;

13 (2) unless otherwise provided in the articles, by  
14 petition of members entitled to cast at least 10% of the  
15 votes [which] that all members are entitled to cast thereon,  
16 setting forth the proposed plan of merger or consolidation,  
17 which petition shall be directed to the board of directors  
18 and filed with the secretary of the corporation; or

19 (3) by such other method as may be provided in the  
20 bylaws.

21 [The] (d) Submission to members.--Except where the  
22 corporation has no members entitled to vote thereon, the board  
23 of directors or other body [or the petitioning members] shall  
24 direct that the plan be submitted to a vote of the members  
25 entitled to vote thereon at a regular or special meeting of the  
26 members.

27 (e) Party to plan or transaction.--A corporation,  
28 partnership, business trust or other association that approves a  
29 plan in its capacity as a member or creditor of a merging or  
30 consolidating corporation, or that furnishes all or a part of

1 the consideration contemplated by a plan, does not thereby  
2 become a party to the plan or the merger or consolidation for  
3 the purposes of this subchapter.

4 (f) Reference to outside facts.--Any of the terms of a plan  
5 of merger or consolidation may be made dependent upon facts  
6 ascertainable outside of the plan if the manner in which the  
7 facts will operate upon the terms of the plan is set forth in  
8 the plan. Such facts may include, without limitation, actions or  
9 events within the control of or determinations made by a party  
10 to the plan or a representative of a party to the plan.

11 § 5923. Notice of meeting of members.

12 (a) General rule.--Written notice of the meeting of members  
13 that will act on the proposed plan shall[, not less than ten  
14 days before the meeting of members called for the purpose of  
15 considering the proposed plan,] be given to each member of  
16 record, whether or not entitled to vote thereon, of each  
17 domestic nonprofit corporation that is a party to the merger or  
18 consolidation. There shall be included in, or enclosed with,  
19 [such] the notice a copy of the proposed plan or a summary  
20 thereof. The notice shall state that a copy of the bylaws of the  
21 surviving or new corporation will be furnished to any member on  
22 request and without cost.

23 (b) Cross reference.--See Subchapter A of Chapter 57  
24 (relating to notice and meetings generally).

25 § 5929. Effect of merger or consolidation.

26 (a) Single surviving or new corporation.--Upon the merger or  
27 consolidation becoming effective, the several corporations  
28 parties to the [plan of] merger or consolidation shall be a  
29 single corporation which, in the case of a merger, shall be  
30 [that] the corporation designated in the plan of merger as the

1 surviving corporation[,] and, in the case of a consolidation,  
2 shall be the new corporation provided for in the plan of  
3 consolidation. The separate existence of all corporations  
4 parties to the [plan of] merger or consolidation shall cease,  
5 except that of the surviving corporation, in the case of a  
6 merger. The surviving or new corporation, as the case may be, if  
7 it is a domestic nonprofit corporation, shall not thereby  
8 acquire authority to engage in any business or exercise any  
9 right [which] that a corporation may not be incorporated under  
10 this [article] subpart to engage in or exercise.

11 (b) Property rights.--Except as otherwise provided by order,  
12 if any, obtained pursuant to section [5547(b)] 5547(c) (relating  
13 to nondiversion of certain property), all the property, real,  
14 personal[,] and mixed, and franchises of each of the  
15 corporations parties to the [plan of] merger or consolidation,  
16 and all debts due on whatever account to any of them, including  
17 subscriptions for membership and other choses in action  
18 belonging to any of them, shall be [taken and] deemed to be  
19 [transferred to and] vested in and shall belong to the surviving  
20 or new corporation, as the case may be, without further [act or  
21 deed] action, and the title to any real estate, or any interest  
22 therein, vested in any of the corporations shall not revert or  
23 be in any way impaired by reason of the merger or consolidation.  
24 The surviving or new corporation shall thenceforth be  
25 responsible for all the liabilities [and obligations] of each of  
26 the corporations so merged or consolidated. [No liens] Liens  
27 upon the property of the merging or consolidating corporations  
28 shall not be impaired by [such] the merger or consolidation, and  
29 any claim existing or action or proceeding pending by or against  
30 any of [such] the corporations may be prosecuted to judgment as

1 if [such] the merger or consolidation had not taken place, or  
2 the surviving or new corporation may be proceeded against or  
3 substituted in its place. Any devise, gift or grant contained in  
4 any will or other instrument, in trust or otherwise, made before  
5 or after such merger or consolidation, to or for any of the  
6 constituent corporations, shall inure to the surviving or new  
7 corporation, as the case may be, subject to compliance with the  
8 requirements of section 5550 (relating to devises, bequests and  
9 gifts after certain fundamental changes).

10 (c) Taxes.--Any taxes, penalties and public accounts of the  
11 Commonwealth, claimed against any of the merging or  
12 consolidating corporations, but not settled, assessed or  
13 determined prior to [such] the merger or consolidation, shall be  
14 settled, assessed or determined against the surviving or new  
15 corporation[,] and, together with interest thereon, shall be a  
16 lien against the franchises and property, both real and  
17 personal, of the surviving or new corporation.

18 (d) Articles of incorporation.--In the case of a merger, the  
19 articles of incorporation of the surviving domestic nonprofit  
20 corporation, if any, shall be deemed to be amended to the  
21 extent, if any, that changes in its articles are stated in the  
22 plan of merger[; and in]. In the case of a consolidation into a  
23 domestic nonprofit corporation, the statements [which] that are  
24 set forth in the plan of consolidation, or articles of  
25 incorporation set forth therein, shall be deemed to be the  
26 articles of incorporation of the new corporation.

27 § 5952. Proposal and adoption of plan of division.

28 (a) Preparation of plan.--A plan of division shall be  
29 prepared, setting forth:

30 (1) The terms and conditions of the division, including

1 the manner and basis of:

2 (i) [the] The reclassification of the membership  
3 interests or shares [or obligations] of the surviving  
4 corporation, if there be one[; and].

5 (ii) [the] The disposition of the membership  
6 interests or shares [and] or obligations, if any, of the  
7 new corporation or corporations resulting from the  
8 division.

9 [(2) The mode of carrying the division into effect.

10 (3)] (2) A statement that the dividing nonprofit  
11 corporation will, or will not, survive the division.

12 [(4)] (3) Any changes desired to be made in the articles  
13 of the surviving corporation, if there be one, including a  
14 restatement of the articles.

15 [(5)] (4) The articles of incorporation required by  
16 subsection (b) [of this section].

17 [(6)] (5) Such other [details and] provisions as are  
18 deemed desirable.

19 (b) Articles of new corporations.--There shall be included  
20 in or annexed to the plan of division:

21 (1) Articles of incorporation, which shall contain all  
22 of the statements required by this [article] subpart to be  
23 set forth in restated articles, for each of the new domestic  
24 nonprofit corporations, if any, resulting from the division.

25 (2) Articles of incorporation, certificates of  
26 incorporation[,] or other charter documents for each of the  
27 new foreign nonprofit corporations [not-for-profit], if any,  
28 resulting from the division.

29 (c) Proposal and adoption.--[The] Except as otherwise  
30 provided in section 5953 (relating to division without member



1 approval), the plan of division shall be proposed and adopted,  
2 and may be amended after its adoption and terminated, by a  
3 domestic nonprofit corporation in the manner provided for the  
4 proposal, adoption, amendment and termination of a plan of  
5 merger in Subchapter C (relating to merger, consolidation and  
6 sale of assets) or, if the dividing corporation is a foreign  
7 nonprofit corporation [not-for-profit], in accordance with the  
8 laws of the jurisdiction in which it is incorporated[.] and, in  
9 the case of a foreign domiciliary corporation, the provisions of  
10 this subpart to the extent provided by section 6145 (relating to  
11 applicability of certain safeguards to foreign corporations).  
12 There shall be included in or enclosed with the notice of the  
13 meeting of members that will act on the plan a copy or summary  
14 of the plan.

15 (d) Special requirements.--If any provision of the bylaws of  
16 a dividing domestic nonprofit corporation adopted before January  
17 1, 1972 shall require for the adoption of a plan of merger or  
18 consolidation or a plan involving the sale, lease or exchange of  
19 all or substantially all of the property and assets of the  
20 corporation a specific number or percentage of votes of  
21 directors, members, or members of an other body or other special  
22 procedures, the plan of division shall not be adopted without  
23 such number or percentage of votes or compliance with such other  
24 special procedures.

25 (e) Financial status of resulting corporations.--Unless the  
26 plan of division provides that the dividing corporation shall  
27 survive the division and that all membership interests or shares  
28 or obligations, if any, of all new corporations resulting from  
29 the plan shall be owned solely by the surviving corporation, no  
30 plan of division may be made effective at a time when the

dividing corporation is insolvent or when the division would  
render any of the resulting corporations insolvent.

(f) Rights of holders of indebtedness.--If any debt  
securities, notes or similar evidences of indebtedness for money  
borrowed, whether secured or unsecured, indentures or other  
contracts were issued, incurred or executed by the dividing  
corporation before January 1, 1972, and have not been amended  
subsequent to that date, the liability of the dividing  
corporation thereunder shall not be affected by the division nor  
shall the rights of the obligees thereunder be impaired by the  
division, and each of the resulting corporations may be  
proceeded against or substituted in place of the dividing  
corporation as joint and several obligors on such liability,  
regardless of any provision of the plan of division apportioning  
the liabilities of the dividing corporation.

(g) Reference to outside facts.--Any of the terms of a plan  
of division may be made dependent upon facts ascertainable  
outside of the plan if the manner in which the facts will  
operate upon the terms of the plan is set forth in the plan.  
Such facts may include, without limitation, actions or events  
within the control of or determinations made by the dividing  
corporation or a representative of the dividing corporation.

§ 5953. [(Reserved).] Division without member approval.

Unless otherwise required by its bylaws or by section 5952  
(relating to proposal and adoption of plan of division), a plan  
of division that does not alter the state of incorporation of a  
nonprofit corporation nor amend in any respect the provisions of  
its articles, except amendments that under section 5914(b)  
(relating to adoption in absence of voting members) may be made  
without member action, shall not require the approval of the

1 members of the corporation if the transfers of assets effected  
2 by the division, if effected by means of a sale, lease, exchange  
3 or other disposition, would not require the approval of members  
4 under section 5930 (relating to voluntary transfer of corporate  
5 assets).

6 § 5957. Effect of division.

7 (a) Multiple resulting corporations.--Upon the division  
8 becoming effective, the dividing corporation shall be subdivided  
9 into the distinct and independent resulting corporations named  
10 in the plan of division and, if the dividing corporation is not  
11 to survive the division, the existence of the dividing  
12 corporation shall cease. The resulting corporations, if they are  
13 domestic nonprofit corporations, shall not thereby acquire  
14 authority to engage in any business or exercise any right  
15 [which] that a corporation may not be incorporated under this  
16 [article] subpart to engage in or exercise. Any resulting  
17 foreign nonprofit corporation [which] that is stated in the  
18 articles of division to be a qualified foreign nonprofit  
19 corporation shall be a qualified foreign nonprofit corporation  
20 under [this subpart] Article C (relating to foreign nonprofit  
21 corporations), and the articles of division shall be deemed to  
22 be the application for a certificate of authority and the  
23 certificate of authority issued thereon of [such] the  
24 corporation.

25 (b) Property rights; allocations of assets and  
26 liabilities.--

27 (1) Except as otherwise provided by order, if any,  
28 obtained pursuant to section [5547(b)] 5547(c) (relating to  
29 nondiversion of certain property)[, all]:

30 (i) All the property, real, personal[, ] and mixed,

1 and franchises of the dividing corporation, and all debts  
2 due on whatever account to it, including subscriptions  
3 for membership and other choses in action belonging to  
4 it, shall, to the extent allocations of assets are  
5 contemplated by the plan of division, be [taken and]  
6 deemed without further [act or deed] action to be  
7 [transferred] allocated to and vested in the resulting  
8 corporations on such a manner and basis and with such  
9 effect as is specified in the plan [of division], or per  
10 capita among the resulting corporations, as tenants in  
11 common, if no [such] specification is made in the plan[.  
12 The], and the title to any real estate, or interest  
13 therein, vested in any of the corporations shall not  
14 revert or be in any way impaired by reason of the  
15 division.

16 (ii) Upon the division becoming effective, the  
17 resulting corporations shall each thenceforth be  
18 responsible as separate and distinct corporations only  
19 for such liabilities [and obligations] as each  
20 corporation may undertake or incur in its own name, but  
21 shall be liable [inter se] for the [debts and]  
22 liabilities of the dividing corporation in the manner and  
23 on the basis [specified in the plan of division. No  
24 liens] provided in paragraphs (4) and (5).

25 (iii) Liens upon the property of the dividing  
26 corporation shall not be impaired by the division.

27 [One] (iv) To the extent allocations of liabilities  
28 are contemplated by the plan of division, the liabilities  
29 of the dividing corporation shall be deemed without  
30 further action to be allocated to and become the

1 liabilities of the resulting corporations on such a  
2 manner and basis and with such effect as is specified in  
3 the plan; and one or more, but less than all, of the  
4 resulting corporations shall be free of [all] the  
5 liabilities [and obligations] of the dividing corporation  
6 to the extent, if any, specified in the plan, if in  
7 either case:

8 (A) no fraud [of corporate creditors or] on  
9 members without voting rights [and if no] or  
10 violation of law shall be effected thereby[,]; and  
11 [if applicable provisions of law are complied with.  
12 Otherwise, the liability]

13 (B) the plan does not constitute a fraudulent  
14 transfer under 12 Pa.C.S. Ch. 51 (relating to  
15 fraudulent transfers).

16 (v) If the conditions in subparagraph (iv) for  
17 freeing one or more of the resulting corporations from  
18 the liabilities of the dividing corporation, or for  
19 allocating some or all of the liabilities of the dividing  
20 corporation, are not satisfied, the liabilities of the  
21 dividing corporation[, or of its members, directors, or  
22 officers,] as to which those conditions are not satisfied  
23 shall not be affected by the division[, nor shall the  
24 rights of [the] creditors [thereof or of any person  
25 dealing with such corporation] thereunder be impaired by  
26 [such] the division[, and[, except as otherwise provided  
27 in this section,] any claim existing or action or  
28 proceeding pending by or against [such] the corporation  
29 with respect to those liabilities may be prosecuted to  
30 judgment as if [such] the division had not taken place,

1 or the resulting corporations may be proceeded against or  
2 substituted in [its] place of the dividing corporation as  
3 joint and several obligors on [such liability] those  
4 liabilities, regardless of any provision of the plan of  
5 division apportioning the [debts and] liabilities of the  
6 dividing corporation.

7 (2) It shall not be necessary for a plan of division to  
8 list each individual asset or liability of the dividing  
9 corporation to be allocated to a new corporation so long as  
10 those assets and liabilities are described in a reasonable  
11 manner.

12 (3) Each new corporation shall hold any assets and  
13 liabilities allocated to it as the successor to the dividing  
14 corporation, and those assets and liabilities shall not be  
15 deemed to have been assigned to the new corporation in any  
16 manner, whether directly or indirectly or by operation of  
17 law.

18 (c) Taxes.--Any taxes, penalties and public accounts of the  
19 Commonwealth, claimed against the dividing corporation, but not  
20 settled, assessed or determined prior to [such] the division,  
21 shall be settled, assessed or determined against any of the  
22 resulting corporations[, and, together with interest thereon,  
23 shall be a lien against the franchises and property, both real  
24 and personal, of all [such] the corporations. [The] Upon the  
25 application of the dividing corporation, the Department of  
26 Revenue [may, upon the application of the dividing corporation],  
27 with the concurrence of the Office of Employment Security of the  
28 Department of Labor and Industry, shall release one or more, but  
29 less than all, of the resulting corporations from liability and  
30 liens for all taxes, penalties and public accounts of the

1 dividing corporation due the Commonwealth [or any other taxing  
2 authority] for periods prior to the effective date of the  
3 division, if [the Department of Revenue is] those departments  
4 are satisfied that the public revenues will be adequately  
5 secured.

6 (d) Articles of surviving corporation.--The articles of  
7 incorporation of the surviving corporation, if there be one,  
8 shall be deemed to be amended to the extent, if any, that  
9 changes in its articles are stated in the plan of division.

10 (e) Articles of new corporations.--The statements [which]  
11 that are set forth in the plan of division with respect to each  
12 new domestic nonprofit corporation and [which] that are required  
13 or permitted to be set forth in restated articles of  
14 incorporation of corporations incorporated under this [article]  
15 subpart, or the articles of incorporation of each new  
16 corporation set forth therein, shall be deemed to be the  
17 articles of incorporation of each [such] new corporation.

18 (f) Directors and officers.--Unless otherwise provided in  
19 the plan, the directors and officers of the dividing corporation  
20 shall be the initial directors and officers of each of the  
21 resulting corporations.

22 (g) Disposition of memberships.--Unless otherwise provided  
23 in the plan, the memberships and other securities or  
24 obligations, if any, of each new corporation resulting from the  
25 division shall be distributable to:

26 (1) the surviving corporation, if the dividing  
27 corporation survives the division; or

28 (2) the members of the dividing corporation pro rata, in  
29 any other case.

30 (h) Conflict of laws.--It is the intent of the General

1 Assembly that:

2       (1) The effect of a division of a domestic business  
3 corporation shall be governed solely by the laws of this  
4 Commonwealth and any other jurisdiction under the laws of  
5 which any of the resulting corporations is incorporated.

6       (2) The effect of a division on the assets and  
7 liabilities of the dividing corporation shall be governed  
8 solely by the laws of this Commonwealth and any other  
9 jurisdiction under the laws of which any of the resulting  
10 corporations is incorporated.

11       (3) The validity of any allocations of assets or  
12 liabilities by a plan of division of a domestic business  
13 corporation, regardless of whether or not any of the new  
14 corporations is a foreign business corporation, shall be  
15 governed solely by the laws of this Commonwealth.

16       (4) In addition to the express provisions of this  
17 subsection, this subchapter shall otherwise generally be  
18 granted the protection of full faith and credit under the  
19 Constitution of the United States.

20 § 5961. Conversion authorized.

21       (a) General rule.--Any nonprofit corporation may, in the  
22 manner provided in this subchapter, be converted into a business  
23 corporation, [hereinafter] designated in this subchapter as the  
24 resulting corporation.

25       (b) Exceptions.--

26           (1) This subchapter shall not authorize any conversion  
27 involving:

28               [(i) A cooperative corporation.

29               (ii)] (i) Beneficial, benevolent, fraternal or

30           fraternal benefit societies having a lodge system and a



1 representative form of government, or transacting any  
2 type of insurance whatsoever.

3 ~~[(iii)]~~ (ii) Any corporation [which] that by the  
4 laws of this Commonwealth is subject to the supervision  
5 of the Department of Banking, the Insurance Department or  
6 the Pennsylvania Public Utility Commission, unless the  
7 agency expressly approves the transaction in writing.

8 (2) [Paragraph (1) of this subsection] Subsection (a)  
9 shall not be construed as repealing any statute [which] that  
10 provides a procedure for the conversion of a nonprofit  
11 corporation into an insurance corporation.

12 § 5962. Proposal and adoption of plan of conversion.

13 (a) Preparation of plan.--A plan of conversion shall be  
14 prepared, setting forth:

15 (1) The terms and conditions of the conversion.

16 [(2) The mode of carrying the conversion into effect.

17 (3)] (2) A restatement of the articles of the resulting  
18 corporation, which articles shall comply with the  
19 requirements of [Subpart B of Part II (relating to business  
20 corporations)] this part relating to business corporations.

21 [(4)] (3) Such other [details and] provisions as are  
22 deemed desirable.

23 (b) Proposal and adoption.--The plan of conversion shall be  
24 proposed and adopted, and may be amended after its adoption and  
25 terminated, by the nonprofit corporation in the manner provided  
26 for the proposal, adoption, amendment and termination of a plan  
27 of merger in Subchapter C (relating to merger, consolidation and  
28 sale of assets). There shall be included in or enclosed with the  
29 notice of meeting of members of the nonprofit corporation that  
30 will act upon the plan a copy or a summary of the plan.

1     (c) Reference to outside facts.--Any of the terms of a plan  
2 of conversion may be made dependent upon facts ascertainable  
3 outside of the plan if the manner in which the facts will  
4 operate upon the terms of the plan is set forth in the plan.  
5 Such facts may include, without limitation, actions or events  
6 within the control of or determinations made by the corporation  
7 or a representative of the corporation.

8     § 5964. Filing of articles of conversion.

9     (a) General rule.--The articles of conversion shall be filed  
10 in the Department of State.

11     (b) Cross [reference.--See section] references.--See  
12 sections 134 (relating to docketing statement) and 135 (relating  
13 to requirements to be met by filed documents).

14     § 5965. Effective date of conversion.

15     Upon the filing of articles of conversion in the Department  
16 of State[, ] or upon the effective date specified in the plan of  
17 conversion, whichever is later, the conversion shall become  
18 effective.

19     § 5966. Effect of conversion.

20     Upon the conversion becoming effective, the converting  
21 nonprofit corporation shall be deemed to be a business  
22 corporation subject to the provisions of this part relating to  
23 business corporations for all purposes, shall cease to be a  
24 nonprofit corporation[, ] and may thereafter operate for a  
25 purpose or purposes resulting in pecuniary profit, incidental or  
26 otherwise, to its members or shareholders. [The] Unless the  
27 shares of the corporation are to be uncertificated, the  
28 corporation shall issue share certificates to each shareholder  
29 entitled thereto. The corporation shall remain liable for all  
30 existing obligations, public [and] or private, and taxes due the

1 Commonwealth or any other taxing authority for periods prior to  
2 the effective date of the conversion, and, as [such] a business  
3 corporation, it shall continue to be entitled to all assets  
4 theretofore pertaining to it as a nonprofit corporation except  
5 as otherwise provided by order, if any, obtained pursuant to  
6 section 5547(b) (relating to nondiversion of certain property).  
7 § 5975. Predissolution provision for liabilities.

8 (a) Powers of board.--The board of directors or other body  
9 of a nonprofit corporation that has elected to proceed under  
10 this section shall have full power to wind up and settle the  
11 affairs of [a nonprofit] the corporation in accordance with this  
12 section prior to filing articles of dissolution in accordance  
13 with section 5977 (relating to articles of dissolution).

14 (b) Notice to creditors and taxing authorities.--After the  
15 approval by the members or the board of directors or other body  
16 pursuant to section 5974(b) (relating to adoption in absence of  
17 voting members) that the corporation dissolve voluntarily, the  
18 corporation shall immediately cause notice of the winding up  
19 proceedings to be officially published and to be mailed by  
20 certified or registered mail to each known creditor and claimant  
21 and to each municipal corporation in which [its registered  
22 office or principal] it has a place of business in this  
23 Commonwealth [is located].

24 (c) Winding up and distribution.--The corporation shall, as  
25 speedily as possible, proceed to collect all sums due it,  
26 convert into cash all corporate assets the conversion of which  
27 into cash is required to discharge its liabilities and, out of  
28 the assets of the corporation, discharge or make adequate  
29 provision for the discharge of all liabilities of the  
30 corporation, according to their respective priorities. Except as

1 otherwise provided in a bylaw adopted by the members or in this  
2 subpart or by any other provision of law, any surplus remaining  
3 after paying or providing for all liabilities of the corporation  
4 shall be distributed to the shareholders, if any, pro rata, or  
5 if there be no shareholders, among the members per capita. See  
6 section 1972(a) (relating to proposal of voluntary dissolution).  
7 § 5976. Judicial supervision of proceedings.

8 (a) General rule.--A nonprofit corporation that has elected  
9 to proceed under section 1975 (relating to predissolution  
10 provision for liabilities), at any time during the winding up  
11 proceedings, may apply to the court to have the proceedings  
12 continued under the supervision of the court and thereafter the  
13 proceedings shall continue under the supervision of the court as  
14 provided in Subchapter G (relating to involuntary liquidation  
15 and dissolution).

16 \* \* \*

17 § 5977. Articles of dissolution.

18 \* \* \*

19 (b) Contents of articles.--The articles of dissolution shall  
20 be executed by the corporation and shall set forth:

21 \* \* \*

22 (5) A statement that:

23 (i) [that] all liabilities of the corporation have  
24 been discharged or that adequate provision has been made  
25 therefor; [or]

26 (ii) [that] the assets of the corporation are not  
27 sufficient to discharge its liabilities, and that all the  
28 assets of the corporation have been fairly and equitably  
29 applied, as far as they will go, to the payment of such  
30 liabilities[. An election by]; or

1            (iii) the corporation has elected to proceed under  
2            Subchapter H [shall constitute the making of adequate  
3            provision for the liabilities of the corporation,  
4            including any judgment or decree that may be obtained  
5            against the corporation in any pending action or  
6            proceeding].

7            \* \* \*

8            (7) [A] In the case of a corporation that has not  
9            elected to proceed under Subchapter H, a statement that no  
10           actions or proceedings are pending against the corporation in  
11           any court, or that adequate provision has been made for the  
12           satisfaction of any judgment or decree that may be obtained  
13           against the corporation in each pending action or proceeding.

14           (8) [A] In the case of a corporation that has not  
15           elected to proceed under Subchapter H, a statement that  
16           notice of the winding-up proceedings of the corporation was  
17           mailed by certified or registered mail to each known creditor  
18           and claimant and to each municipal corporation in which the  
19           [registered office or principal place of business of the]  
20           corporation has a place of business in this Commonwealth [is  
21           located].

22           \* \* \*

23           (d) Cross references.--See sections 134 (relating to  
24           docketing statement) and 135 (relating to requirements to be met  
25           by filed documents).

26           § 5991.1. Authority of board of directors.

27           (a) General rule.--The board of directors or other body of a  
28           nonprofit corporation that has elected to proceed under this  
29           subchapter shall have full power to wind up and settle the  
30           affairs of the corporation in accordance with this subchapter

1 both prior to and after the filing of articles of dissolution in  
2 accordance with section 5977 (relating to articles of  
3 dissolution).

4 (b) Winding up.--The corporation shall, as speedily as  
5 possible, proceed to comply with the requirements of this  
6 subchapter while simultaneously collecting all sums due it and  
7 converting into cash all corporate assets, the conversion of  
8 which into cash is required to make adequate provision for its  
9 liabilities.

10 § 6146. Provisions applicable to all foreign corporations.

11 The following provisions of this subpart shall, except as  
12 otherwise provided in this section, be applicable to every  
13 foreign corporation not-for-profit, whether or not required to  
14 procure a certificate of authority under this chapter:

15 Section 5503 (relating to defense of ultra vires), as to  
16 contracts and conveyances governed by the laws of this  
17 Commonwealth and conveyances affecting real property situated  
18 in this Commonwealth.

19 Section 5506 (relating to form of execution of  
20 instruments), as to instruments or other documents governed  
21 by the laws of this Commonwealth or affecting real property  
22 situated in this Commonwealth.

23 Section 5510 (relating to certain specifically authorized  
24 debt terms), as to obligations (as defined in the section)  
25 governed by the laws of this Commonwealth or affecting real  
26 property situated in this Commonwealth.

27 Section 5782 (relating to actions against directors,  
28 members of an other body and officers), as to any action or  
29 proceeding brought in a court of this Commonwealth.

30 § 8105. Ownership of certain professional partnerships.

1 Except as otherwise provided by statute, rule or regulation  
2 applicable to a particular profession, all of the [partners in]  
3 ultimate beneficial owners of the partnership interests in a  
4 partnership that renders one or more restricted professional  
5 services shall be licensed persons. As used in this section,  
6 the term "restricted professional services" shall have the  
7 meaning specified in section 8903 (relating to definitions and  
8 index of definitions).

9 § 8201. Scope.

10 \* \* \*

11 (e) Prohibited termination.--A registration under this  
12 subchapter may not be terminated while the partnership is a  
13 bankrupt as that term is defined in section 8903 (relating to  
14 definitions and index of definitions). See section 8221(f)  
15 (relating to annual registration).

16 (f) Alternative procedure.--In lieu of filing a statement of  
17 registration as provided in subsection (a), a limited  
18 partnership may register as a registered limited liability  
19 partnership by including in its certificate of limited  
20 partnership, either originally or by amendment, the statements  
21 required by subsection (a)(3) and (4). To terminate its  
22 registration, a limited partnership that uses the procedure  
23 authorized by this subsection shall amend its certificate of  
24 limited partnership to delete the statements required by this  
25 subsection.

26 (g) Constructive notice.--Filing under this section shall  
27 constitute constructive notice that the partnership is a  
28 registered limited liability partnership and that the partners  
29 are entitled to the protections from liability provided by this  
30 subchapter.

1 [(e)] (h) Cross references.--See sections 134 (relating to  
2 docketing statement) and 135 (relating to requirements to be met  
3 by filed documents).

4 § 8202. Definitions.

5 The following words and phrases when used in this chapter  
6 shall have the meanings given to them in this section unless the  
7 context clearly indicates otherwise:

8 \* \* \*

9 "Partner." Includes a person who is or was a partner in a  
10 registered limited liability partnership at any time while the  
11 registration of the partnership under this subchapter is or was  
12 in effect.

13 \* \* \*

14 § 8204. Limitation on liability of partners.

15 (a) General rule.--Except as provided in subsection (b), a  
16 partner in a registered limited liability partnership shall not  
17 be individually liable directly or indirectly, whether by way of  
18 indemnification, contribution or otherwise, for debts and  
19 obligations of, or chargeable to, the partnership, whether  
20 sounding in contract or tort or otherwise, that arise from any  
21 negligent or wrongful acts or misconduct committed by another  
22 partner or other representative of the partnership while the  
23 registration of the partnership under this subchapter is in  
24 effect.

25 (b) Exceptions.--

26 (1) [Subsection (a) shall not apply to any debt or  
27 obligation with respect to which the partnership is not in  
28 compliance with section 8206(a) (relating to insurance).]

29 (Repealed).

30 \* \* \*



(3) Subsection (a) shall not affect in any way:

(i) the liability of the partnership itself for all its debts and obligations; [or]

(ii) the availability of the entire assets of the partnership to satisfy its debts and obligations; or

(iii) any obligation undertaken by a partner in writing to individually indemnify another partner of the partnership or to individually contribute toward a liability of another partner.

\* \* \*

§ 8205. Liability of withdrawing partner.

\* \* \*

(b) Exceptions.--Subsection (a) shall not affect the liability of a partner:

\* \* \*

(7) For any obligation undertaken by a partner in writing to individually indemnify another partner of the partnership or to individually contribute toward a liability of another partner.

\* \* \*

(e) Permissive filing.--Filing under this section is permissive, and failure to make a filing under this section by a partner entitled to do so shall not affect the right of that partner to the limitation on liability provided by section 8204 (relating to limitation on liability of partners).

(f) Constructive notice.--Filing under this section shall constitute constructive notice that the partner has withdrawn from the partnership and is entitled to the protection from liability provided by this section.

(g) Variation of section.--A written provision of the

1 partnership agreement may restrict or condition the application  
2 of this section to some or all of the partners of the  
3 partnership.

4 (h) Application of section.--A partner in a foreign  
5 registered limited liability partnership, regardless of whether  
6 or not it has registered to do business in this Commonwealth  
7 under section 8211 (relating to foreign registered limited  
8 liability partnerships), shall not be entitled to make a filing  
9 under this section with regard to that partnership.

10 [(e)] (i) Cross references.--See sections 134 (relating to  
11 docketing statement) and 135 (relating to requirements to be met  
12 by filed documents).

13 § 8211. Foreign registered limited liability partnerships.

14 (a) Governing law.--Subject to the Constitution of  
15 Pennsylvania:

16 (1) The laws of the jurisdiction under which a foreign  
17 registered limited liability partnership is organized govern  
18 its organization and internal affairs and the liability of  
19 its partners, except as provided in subsection (c).

20 (2) A foreign registered limited liability partnership  
21 may not be denied registration by reason of any difference  
22 between those laws and the laws of this Commonwealth.

23 (b) Registration to do business.--A foreign registered  
24 limited liability partnership, regardless of whether or not it  
25 is also a foreign limited partnership, shall be subject to  
26 Subchapter K of Chapter 85 (relating to foreign limited  
27 partnerships) as if it were a foreign limited partnership,  
28 except that [the]:

29 (1) Its application for registration shall state that it  
30 is a registered limited liability partnership.

1       (2) The name under which [the foreign registered limited  
2       liability partnership] it registers and conducts business in  
3       this Commonwealth shall comply with the requirements of

4       section 8203 (relating to name).

5       (3) Section 8582(a)(5) and (6) (relating to  
6       registration) shall not be applicable to the application for  
7       registration of a foreign limited liability partnership that  
8       is not a foreign limited partnership.

9       (c) Exception.--The liability of the partners in a foreign  
10      registered limited liability partnership shall be governed by  
11      the laws of the jurisdiction under which it is organized, except  
12      that the partners shall not be entitled to greater protection  
13      from liability than is available to the partners in a domestic  
14      registered limited liability partnership.

15      § 8221. Annual registration.

16      \* \* \*

17      (e) [Annual fee to be lien] Failure to pay annual fee.--

18      (1) Failure to [pay the annual registration fee imposed]  
19      file the certificate of annual registration required by this  
20      section [shall not affect the existence or] for five  
21      consecutive years shall result in the automatic termination  
22      of the status of the registered limited liability partnership  
23      as such[, but the]. In addition, any annual registration fee  
24      that is not paid when due shall be a lien in the manner  
25      provided in this subsection from the time the annual  
26      registration fee is due and payable [upon]. If a certificate  
27      of annual registration is not filed within 30 days after the  
28      date on which it is due, the department shall assess a  
29      penalty of \$500 against the partnership, which shall also be  
30      a lien in the manner provided in this subsection. The

1 imposition of that penalty shall not be construed to relieve  
2 the partnership from liability for any other penalty or  
3 interest provided for under other applicable law.

4 (2) If the annual registration fee paid by a registered  
5 limited liability partnership is subsequently determined to  
6 be less than should have been paid because it was based on an  
7 incorrect number of general partners or was otherwise  
8 incorrectly computed, that fact shall not affect the  
9 existence or status of the registered limited liability  
10 partnership as such, but the amount of the additional annual  
11 registration fee that should have been paid shall be a lien  
12 in the manner provided in this subsection from the time the  
13 incorrect payment is discovered by the department.

14 (3) The annual registration fee shall bear simple  
15 interest from the date that it becomes due and payable until  
16 paid. The interest rate shall be that provided for in section  
17 806 of the act of April 9, 1929 (P.L.343, No.176), known as  
18 The Fiscal Code, with respect to unpaid taxes. The penalty  
19 provided for in paragraph (1) shall not bear interest. The  
20 payment of interest shall not relieve the registered limited  
21 liability partnership from liability for any other penalty or  
22 interest provided for under other applicable law.

23 (4) The lien created by this subsection shall attach to  
24 all of the property and proceeds thereof of the registered  
25 limited liability partnership in which a security interest  
26 can be perfected in whole or in part by filing in the  
27 department under 13 Pa.C.S. Div. 9 (relating to secured  
28 transactions; sales of accounts, contract rights and chattel  
29 paper), whether the property and proceeds are owned by the  
30 partnership at the time the annual registration fee or any

1 penalty or interest becomes due and payable or whether the  
2 property and proceeds are acquired thereafter. Except as  
3 otherwise provided by statute, the lien created by this  
4 subsection shall have priority over all other liens, security  
5 interests or other charges, except liens for taxes or other  
6 charges due the Commonwealth. The lien created by this  
7 subsection shall be entered on the records of the department  
8 and indexed in the same manner as a financing statement filed  
9 under 13 Pa.C.S. Div. 9. At the time an annual registration  
10 fee, penalty or interest that has resulted in the creation of  
11 a lien under this subsection is paid, the department shall  
12 terminate the lien with respect to that annual registration  
13 fee, penalty or interest without requiring a separate filing  
14 by the partnership for that purpose.

15 (5) If the annual registration fee paid by a registered  
16 limited liability partnership is subsequently determined to  
17 be more than should have been paid for any reason, no refund  
18 of the additional fee shall be made.

19 (6) Termination of the status of a registered limited  
20 liability partnership as such, whether voluntarily or  
21 involuntarily, shall not release it from the obligation to  
22 pay any accrued fees, penalties and interest and shall not  
23 release the lien created by this subsection.

24 (f) Exception for bankrupt partnerships.--A partnership that  
25 would otherwise be required to pay the annual registration fee  
26 set forth in subsection (b) shall not be required to pay that  
27 fee with respect to any year during any part of which the  
28 partnership is a bankrupt as defined in section 8903 (relating  
29 to definitions and index of definitions). The partnership shall,  
30 instead, indicate on its certificate of annual registration for

1 that year that it is exempt from payment of the annual  
2 registration fee pursuant to this subsection. If the partnership  
3 fails to file timely a certificate of annual registration, a  
4 lien shall be entered on the records of the department pursuant  
5 to subsection (e) which shall not be removed until the  
6 partnership files a certificate of annual registration  
7 indicating its entitlement to an exemption from payment of the  
8 annual registration fee as provided in this subsection. See  
9 section 8201(e) (relating to scope).

10 § 8503. Definitions and index of definitions.

11 (a) Definitions.--The following words and phrases when used  
12 in this chapter shall have the meanings given to them in this  
13 section unless the context clearly indicates otherwise:

14 "Certificate of limited partnership." The certificate  
15 referred to in section 8511 (relating to certificate of limited  
16 partnership) and the certificate as amended. The term includes  
17 any other statements or certificates permitted or required to be  
18 filed in the Department of State by sections 108 (relating to  
19 change in location or status of registered office provided by  
20 agent) and 138 (relating to statement of correction) or this  
21 part. If an amendment of the certificate of limited partnership  
22 or a certificate of merger or division made in the manner  
23 permitted by this chapter restates the certificate in its  
24 entirety or if there is a certificate of consolidation,  
25 thenceforth the "certificate of limited partnership" shall not  
26 include any prior documents and any certificate issued by the  
27 department with respect thereto shall so state.

28 \* \* \*

29 "Court." Subject to any inconsistent general rule prescribed  
30 by the Supreme Court of Pennsylvania:

1           (1) the court of common pleas of the judicial district  
2       embracing the county where the registered office of the  
3       limited partnership is or is to be located; or

4           (2) where a limited partnership results from a merger,  
5       consolidation, division or other transaction without  
6       establishing a registered office in this Commonwealth or  
7       withdraws as a foreign limited partnership, the court of  
8       common pleas in which venue would have been laid immediately  
9       prior to the transaction or withdrawal.

10       ["Department." The Department of State of the Commonwealth.]

11       \* \* \*

12       "Partnership agreement." Any agreement, written or oral, of  
13       the partners as to the affairs of a limited partnership and the  
14       conduct of its business. [A written partnership agreement:

15           (1) May provide that a person shall be admitted as a  
16       limited partner, or shall become an assignee of a partnership  
17       interest or other rights or powers of a limited partner to  
18       the extent assigned, and shall become bound by the  
19       partnership agreement:

20           (i) if such person (or a representative authorized  
21       by such person orally, in writing or by other action such  
22       as payment for a partnership interest) executes the  
23       partnership agreement or any other writing evidencing the  
24       intent of such person to become a limited partner or  
25       assignee; or

26           (ii) without such execution, if such person (or a  
27       representative authorized by such person orally, in  
28       writing or by other action such as payment for a  
29       partnership interest) complies with the conditions for  
30       becoming a limited partner or assignee as set forth in

1 the partnership agreement or any other writing and  
2 requests (orally, in writing or by other action such as  
3 payment for a partnership interest) that the records of  
4 the limited partnership reflect such admission or  
5 assignment.

6 (2) Shall not be unenforceable by reason of its not  
7 having been signed by a person being admitted as a limited  
8 partner or becoming an assignee as provided in paragraph (1)  
9 or by reason of its having been signed by a representative as  
10 provided in section 8514(b) (relating to attorney-in-fact).

11 (3) May provide that, whenever a provision of this  
12 chapter requires the vote or consent of a specified number or  
13 percentage of partners or of a class of partners for the  
14 taking of any action, a higher number or percentage of votes  
15 or consents shall be required for the action. Except as  
16 otherwise provided in the partnership agreement, whenever the  
17 partnership agreement requires for the taking of any action  
18 by the partners or a class of partners a specific number or  
19 percentage of votes or consents, the provision of the  
20 partnership agreement setting forth that requirement shall  
21 not be amended or repealed by any lesser number or percentage  
22 of votes or consents of the partners or the class of  
23 partners.]

24 \* \* \*

25 "Relax." When used with respect to a provision of the  
26 certificate of limited partnership or partnership agreement,  
27 means to provide lesser rights for an affected representative or  
28 partner.

29 (b) Index of definitions.--Other definitions applying to  
30 this chapter and the sections in which they appear are:



1     "Act" or "action." Section 102.

2     "Department." Section 102.

3     "Licensed person." Section 102.

4     "Professional services." Section 102.

5     § 8510. Indemnification.

6     \* \* \*

7     (b) When indemnification is not to be made.--Indemnification  
8     pursuant to subsection (a) shall not be made in any case where  
9     the act [or failure to act] giving rise to the claim for  
10    indemnification is determined by a court to have constituted  
11    willful misconduct or recklessness. The certificate of limited  
12   partnership or partnership agreement may not provide for  
13   indemnification in the case of willful misconduct or  
14   recklessness.

15    \* \* \*

16    (f) Mandatory indemnification.--Without regard to whether  
17   indemnification or advancement of expenses is provided under  
18   subsections (a) and (d), a limited partnership shall be subject  
19   to section 8331(2) (relating to rules determining rights and  
20   duties of partners).

21                                   SUBCHAPTER B

22                   FORMATION[; CERTIFICATE OF LIMITED PARTNERSHIP]

23    § 8511. Certificate of limited partnership.

24    (a) General rule.--In order to form a limited partnership, a  
25    certificate of limited partnership must be executed and filed in  
26    the Department of State. The certificate shall set forth:

27           (1) The name of the limited partnership.

28           (2) Subject to section 109 (relating to name of  
29    commercial registered office provider in lieu of registered  
30    address), the address, including street and number, if any,

1 of its registered office.

2 (3) The name and business address of each general  
3 partner.

4 (4) If a partner's interest in the limited partnership  
5 is to be evidenced by a certificate of partnership interest,  
6 a statement to that effect.

7 (5) Any other [matters the partners determine to include  
8 therein. A provision included in the certificate of limited  
9 partnership pursuant to this paragraph shall be deemed to be  
10 a provision of the partnership agreement for purposes of any  
11 provision of this chapter that refers to a rule as set forth  
12 in the partnership agreement.] provision, whether or not  
13 specifically authorized by or in contravention of this  
14 chapter, that the partners elect to set out in the  
15 certificate of limited partnership for the regulation of the  
16 internal affairs of the limited partnership, except where a  
17 provision of this chapter expressly provides that the  
18 certificate of limited partnership shall not relax or  
19 contravene any provision on a specified subject.

20 (b) Effective date of formation.--A limited partnership is  
21 formed at the time of the filing of the certificate of limited  
22 partnership in the department or at any later time specified in  
23 the certificate of limited partnership if, in either case, there  
24 has been substantial compliance with the requirements of this  
25 section or the corresponding provisions of prior law.

26 (c) [Duties of recorders of deeds.--Each recorder of deeds  
27 shall continue to keep open for public inspection the record of  
28 limited partnership certificates recorded under the statutes  
29 supplied by this chapter and by prior law the custody of which  
30 has not been transferred to the department pursuant to section

1 140 (relating to custody and management of orphan corporate and  
2 business records).] (Repealed).

3 (d) Transitional provision.--A limited partnership formed  
4 under prior law shall not be required to set forth in its  
5 certificate of limited partnership a registered office or the  
6 business address of each general partner until such time as it  
7 first amends its certificate of limited partnership under this  
8 chapter.

9 (e) Effect of provisions.--A provision of the certificate of  
10 limited partnership shall be deemed to be a provision of the  
11 partnership agreement for purposes of any provision of this  
12 chapter that refers to a rule as set forth in the partnership  
13 agreement.

14 [(e)] (f) Cross references.--See sections 134 (relating to  
15 docketing statement), 135 (relating to requirements to be met by  
16 filed documents) and 8514 (relating to execution of  
17 certificates).

18 § 8517. Notice.

19 The fact that a certificate of limited partnership is on file  
20 in the Department of State is not notice of any fact other than:

21 (1) that the partnership is a limited partnership and  
22 that all partners are limited partners except the persons  
23 designated therein as general partners[, but it is not notice  
24 of any other fact]; and

25 (2) if it is registered under Chapter 82 (relating to  
26 registered limited liability partnerships), that it is also a  
27 registered limited liability partnership.

28 § 8519. Filing of certificate of summary of record by limited  
29 partnerships formed prior to 1976.

30 (a) General rule.--[Any limited partnership that was not

1 formed under this chapter, has never made any filing under this  
2 section or corresponding provisions of prior law and] Where any  
3 of the organic documents of a limited partnership are not on  
4 file in the Department of State or there is an error in any such  
5 document as transferred to the department pursuant to section  
6 140 (relating to custody and management of orphan corporate and  
7 business records), and the limited partnership desires to file  
8 any document in the [Department of State] department under any  
9 other provision of this chapter or [that desires] to secure from  
10 the department a certified copy of the certificate of limited  
11 partnership or to correct the text of its organic documents as  
12 on file in the department, the limited partnership shall file in  
13 the department a certificate of summary of record which shall  
14 set forth:

15 (1) The name of the limited partnership.

16 (2) Subject to section 109 (relating to name of  
17 commercial registered office provider in lieu of registered  
18 address), the address, including street and number, if any,  
19 of its registered office.

20 (3) The statute under which the limited partnership was  
21 formed.

22 (4) The name under which, and the date on which, the  
23 limited partnership was originally formed, including the date  
24 when and the place where the original certificate was  
25 recorded.

26 (5) The place or places, including the volume and page  
27 numbers or their equivalent, where the documents  
28 [constituting the currently effective certificate are] that  
29 are not on file in the department or that require correction  
30 in the records of the department where originally recorded,

1 the date or dates of each recording and the correct text of  
2 the [currently effective certificate] documents. The  
3 information specified in this paragraph may be omitted in a  
4 certificate of summary of record that is delivered to the  
5 department contemporaneously with an amended certificate  
6 filed under this chapter that restates the certificate in its  
7 entirety.

8 [(6) Each name by which the limited partnership was  
9 known, if any, other than its original name and its current  
10 name and the date or dates on which each change of name of  
11 the partnership became effective.]

12 (b) Cross references.--See sections 134 (relating to  
13 docketing statement), 135 (relating to requirements to be met by  
14 filed documents) and 8514 (relating to execution of  
15 certificates).

16 § 8520. Partnership agreement.

17 (a) Admission of limited partners.--A partnership agreement  
18 may provide in writing that a person shall be admitted as a  
19 limited partner, or shall become an assignee of a partnership  
20 interest or other rights or powers of a limited partner to the  
21 extent assigned, and shall become bound by the partnership  
22 agreement:

23 (1) if such person (or a representative authorized by  
24 such person orally, in writing or by other action such as  
25 payment for a partnership interest) executes the partnership  
26 agreement or any other writing evidencing the intent of such  
27 person to become a limited partner or assignee; or

28 (2) without such execution, if such person (or a  
29 representative authorized by such person orally, in writing  
30 or by other action such as payment for a partnership

1 interest) complies with the conditions for becoming a limited  
2 partner or assignee as set forth in the partnership agreement  
3 or any other writing and requests (orally, in writing or by  
4 other action such as payment for a partnership interest) that  
5 the records of the limited partnership reflect such admission  
6 or assignment.

7 (b) Signature by limited partners.--A written partnership  
8 agreement shall not be unenforceable by reason of its not having  
9 been signed by a person being admitted as a limited partner or  
10 becoming an assignee as provided in subsection (a) or by reason  
11 of its having been signed by a representative as provided in  
12 section 8514(b) (relating to attorney-in-fact).

13 (c) Voting requirements.--A partnership agreement may  
14 provide in writing that, whenever a provision of this chapter  
15 requires the vote or consent of a specified number or percentage  
16 of partners or of a class of partners for the taking of any  
17 action, a higher number or percentage of votes or consents shall  
18 be required for the action. Except as otherwise provided in the  
19 partnership agreement, whenever the partnership agreement  
20 requires for the taking of any action by the partners or a class  
21 of partners a specific number or percentage of votes or  
22 consents, the provision of the partnership agreement setting  
23 forth that requirement shall not be amended or repealed by any  
24 lesser number or percentage of votes or consents of the partners  
25 or the class of partners.

26 (d) Freedom of contract.--A written partnership agreement  
27 may contain any provision for the regulation of the internal  
28 affairs of the limited partnership agreed to by the partners,  
29 whether or not specifically authorized by or in contravention of  
30 this chapter, except where this chapter:

1       (1) refers only to a rule as set forth in the  
2       certificate of limited partnership; or

3       (2) expressly provides that the partnership agreement  
4       shall not relax or contravene any provision on a specified  
5       subject.

6       (e) Oral provisions.--A partnership agreement may provide in  
7       writing that it cannot be amended or modified except in writing,  
8       in which case an oral agreement, amendment or modification shall  
9       not be enforceable.

10      (f) Cross reference.--See section 8511(a)(5) (relating to  
11      certificate of limited partnership).

12      § 8523. Liability of limited partners to third parties.

13      (a) General rule.--A limited partner is not liable [for the  
14 obligations of a limited partnership unless he is also a general  
15 partner or, in addition to the exercise of his rights and powers  
16 as a limited partner, he participates in the control of the  
17 business. However, if the limited partner participates in the  
18 control of the business, he is liable only to persons who  
19 transact business with the limited partnership reasonably  
20 believing, based upon the conduct of the limited partner, that  
21 the limited partner is a general partner.], solely by reason of  
22 being a limited partner, under an order of a court or in any  
23 other manner, for a debt, obligation or liability of the limited  
24 partnership of any kind or for the acts of any partner, agent or  
25 employee of the limited partnership.

26      (b) [Activities compatible with limited partner status.--A  
27 limited partner does not participate in the control of the  
28 business within the meaning of subsection (a) solely by doing  
29 one or more of the following:

30           (1) Being a contractor for, or an agent or employee of

1 the limited partnership or of a general partner, or being an  
2 officer, director, trustee, partner or shareholder of a  
3 general partner.

4 (2) Consulting with and advising a general partner with  
5 respect to any matter, including, without limitation, the  
6 business of the limited partnership.

7 (3) (i) Acting as surety for the limited partnership,  
8 or guaranteeing, endorsing or assuming one or more  
9 specific obligations of the limited partnership, or a  
10 general partner.

11 (ii) Borrowing money from the limited partnership or  
12 a general partner.

13 (iii) Lending money to the limited partnership or a  
14 general partner.

15 (iv) Providing collateral for the limited  
16 partnership or a general partner.

17 (4) Taking any action required or permitted by law to  
18 bring, pursue or settle or otherwise terminate a derivative  
19 action in the right of the limited partnership.

20 (5) Requesting or attending a meeting of partners.

21 (6) Acting or causing the taking or refraining from the  
22 taking of any action, including, without limitation, by  
23 proposing, approving, consenting or disapproving, by voting  
24 or otherwise, with respect to one or more of the following  
25 matters:

26 (i) The dissolution and winding up of the limited  
27 partnership, or an election to continue the limited  
28 partnership or the business of the limited partnership.

29 (ii) The sale, exchange, lease, mortgage, pledge or  
30 other transfer of, or the grant of a security interest



1 in, any asset or assets of the limited partnership.

2 (iii) The incurrence, renewal, refinancing or  
3 payment or other discharge of indebtedness by the limited  
4 partnership.

5 (iv) A change in the nature of the business.

6 (v) The admission or removal of a general partner.

7 (vi) The admission or removal of a limited partner.

8 (vii) A transaction involving an actual or potential  
9 conflict of interest between a general partner and the  
10 limited partnership or the limited partners.

11 (viii) An amendment to the partnership agreement or  
12 certificate of limited partnership.

13 (ix) The merger or consolidation of the limited  
14 partnership.

15 (x) The indemnification of any partner or other  
16 person.

17 (xi) Matters related to the business of the limited  
18 partnership not otherwise enumerated in this subsection,  
19 which the partnership agreement states in writing may be  
20 subject to the approval or disapproval of limited  
21 partners.

22 (7) Applying for dissolution of the partnership pursuant  
23 to section 8572 (relating to judicial dissolution).

24 (8) Winding up the limited partnership pursuant to  
25 section 8573 (relating to winding up).

26 (9) In the case of a registered investment company,  
27 voting on one or more of the following matters:

28 (i) The approval or termination of investment  
29 advisory or underwriting contracts.

30 (ii) The approval of auditors.

(iii) Any other matter that by reason of the Investment Company Act of 1940 (54 Stat. 789, 15 U.S.C. § 80a-1 et seq.) the general partners consider to be a proper matter for the vote of the holders of voting securities or beneficial interests in the limited partnership.

(10) Serving on a committee of the limited partnership or the limited partners.

(11) Exercising any right or power permitted to limited partners under this chapter and not specifically enumerated in this subsection.

(12) Exercising any other right or power stated in the partnership agreement.] (Repealed).

(c) [Enumeration nonexclusive.--The enumeration in subsection (b) does not mean that the possession or exercise of any other powers, or having or acting in other capacities, by a limited partner constitutes participation by him in the control of the business of the limited partnership.] (Repealed).

(d) Use of name of limited partner.--A limited partner does not [participate in the control of the business within the meaning of subsection (a)] become liable for the obligations of a limited partnership by reason of the fact that all or any part of the name of the limited partner is included in the name of the limited partnership.

(e) [Effect of section.--This section does not create rights or powers of limited partners. Such rights and powers may be created only by the certificate of limited partnership, partnership agreement or any other agreement or other provisions of this chapter.] (Repealed).

\* \* \*

1 § 8546. Approval of merger or consolidation.

2 (a) Preparation of plan of merger or consolidation.--A plan  
3 of merger or consolidation, as the case may be, shall be  
4 prepared, setting forth:

5 \* \* \*

6 (3) The manner and basis of converting the partnership  
7 interests of each limited partnership into partnership  
8 interests, securities or obligations of the surviving or new  
9 limited partnership, as the case may be, and, if any of the  
10 partnership interests of any of the limited partnerships that  
11 are parties to the [plan] merger or consolidation are not to  
12 be converted solely into partnership interests, securities or  
13 obligations of the surviving or new limited partnership, the  
14 partnership interests, securities or obligations of any other  
15 person or cash, property or rights that the holders of such  
16 partnership interests are to receive in exchange for, or upon  
17 conversion of, such partnership interests, and the surrender  
18 of any certificates evidencing them, which securities or  
19 obligations, if any, of any other person or cash, property or  
20 rights may be in addition to or in lieu of the partnership  
21 interests, securities or obligations of the surviving or new  
22 limited partnership.

23 (4) Such other provisions as are deemed desirable.  
24 [Any of the terms of the plan may be made dependent upon facts  
25 ascertainable outside of the plan if the manner in which the  
26 facts will operate upon the terms of the plan is set forth in  
27 the plan.]

28 (b) Post-adoption amendment of plan of merger or  
29 consolidation.--A plan of merger or consolidation may contain a  
30 provision that the general partners of the constituent limited

1 partnerships may amend the plan at any time prior to its  
2 effective date, except that an amendment made subsequent to any  
3 adoption of the plan by the limited partners of any constituent  
4 domestic limited partnership shall not change:

5 (1) The amount or kind of partnership interests,  
6 obligations, cash, property or rights to be received in  
7 exchange for or on conversion of all or any of the  
8 partnership interests of the constituent domestic limited  
9 partnership adversely to the holders of those partnership  
10 interests.

11 (2) Any term of the certificate of limited partnership  
12 or partnership agreement of the surviving or new limited  
13 partnership [to be effected by] as it is to be in effect  
14 immediately following consummation of the merger or  
15 consolidation except provisions that may be amended without  
16 the approval of the limited partners.

17 (3) Any of the other terms and conditions of the plan if  
18 the change would adversely affect the holders of any  
19 partnership interests of the constituent domestic limited  
20 partnership.

21 \* \* \*

22 (d) Party to plan.--[A limited partnership] An association  
23 that approves a plan in its capacity as a partner or creditor of  
24 a merging or consolidating limited partnership, or that  
25 furnishes all or a part of the consideration contemplated by a  
26 plan, does not thereby become a party to the [plan] merger or  
27 consolidation for the purposes of this subchapter.

28 (e) Notice of meeting of limited partners.--Notwithstanding  
29 any other provision of the partnership agreement, written notice  
30 of the meeting of limited partners called for the purpose of

1 considering the proposed plan shall be given to each limited  
2 partner of record, whether or not entitled to vote thereon, of  
3 each domestic limited partnership that is a party to the [plan]  
4 proposed merger or consolidation. There shall be included in, or  
5 enclosed with, the notice a copy of the proposed plan or a  
6 summary thereof. The provisions of this subsection may not be  
7 relaxed by the certificate of limited partnership or partnership  
8 agreement.

9 (f) Adoption of plan by limited partners.--The plan of  
10 merger or consolidation shall be adopted upon receiving a  
11 majority of the votes cast by all limited partners, if any,  
12 entitled to vote thereon of each of the domestic limited  
13 partnerships that is a party to the [plan] proposed merger or  
14 consolidation and, if any class of limited partners is entitled  
15 to vote thereon as a class, a majority of the votes cast in each  
16 class vote. A proposed plan of merger or consolidation shall not  
17 be deemed to have been adopted by the limited partnership unless  
18 it has also been approved by the general partners, regardless of  
19 the fact that the general partners have directed or suffered the  
20 submission of the plan to the limited partners for action.

21 \* \* \*

22 (h) Termination of plan.--Prior to the time when a merger or  
23 consolidation becomes effective, the merger or consolidation may  
24 be terminated pursuant to provisions therefor, if any, set forth  
25 in the plan. If a certificate of merger or consolidation has  
26 been filed in the department prior to the termination, a  
27 certificate of termination executed by each limited partnership  
28 that is a party to the [plan] merger or consolidation, unless  
29 the plan permits termination by less than all of the limited  
30 partnerships, in which case the certificate shall be executed on

1 behalf of the limited partnership exercising the right to  
2 terminate, shall be filed in the department. The certificate of  
3 termination shall set forth:

4 (1) A copy of the certificate of merger or consolidation  
5 relating to the plan that is terminated.

6 (2) A statement that the plan has been terminated in  
7 accordance with the provisions therefor set forth therein.

8 See sections 134 (relating to docketing statement), 135  
9 (relating to requirements to be met by filed documents), 138  
10 (relating to statement of correction) and 8514 (relating to  
11 execution of certificates).

12 \* \* \*

13 (j) Reference to outside facts.--Any of the terms of a plan  
14 of merger or consolidation may be made dependent upon facts  
15 ascertainable outside of the plan if the manner in which the  
16 facts will operate upon the terms of the plan is set forth in  
17 the plan. Such facts may include, without limitation, actions or  
18 events within the control of or determinations made by a party  
19 to the plan or a representative of a party to the plan.

20 § 8553. Voluntary withdrawal of limited partner.

21 (a) General rule.--A limited partner may withdraw from a  
22 limited partnership only at the time or upon the happening of  
23 events specified in writing in the partnership agreement. [If  
24 the partnership agreement does not specify in writing the time  
25 or the events upon the happening of which a limited partner may  
26 withdraw or a definite time for the dissolution and winding up  
27 of the limited partnership, a limited partner may withdraw upon  
28 not less than six months' prior written notice to each general  
29 partner at his address on the books of the limited partnership.]

30 (b) [Prohibition of withdrawal.--The partnership agreement

1 may provide that a limited partner may not withdraw from the  
2 limited partnership or assign a partnership interest in the  
3 limited partnership prior to the dissolution and winding up of  
4 the limited partnership.] (Repealed).

5 (c) Transitional rule.--This section applies to all limited  
6 partnerships formed on or after January 1, 1999. If the  
7 partnership agreement of a limited partnership formed before  
8 January 1, 1999, did not on December 31, 1998, specify in  
9 writing the time or the events upon the happening of which a  
10 limited partner could withdraw or a definite time for the  
11 dissolution and winding up of the limited partnership, the  
12 provisions of this section that were in effect prior to January  
13 1, 1999, shall apply until such time, if any, as the partnership  
14 agreement is amended in writing after January 1, 1999, to  
15 specify:

16 (1) a time or the events upon the happening of which a  
17 limited partner may withdraw;

18 (2) a definite time for the dissolution and winding up  
19 of the limited partnership; or

20 (3) that this section as effective January 1, 1999,  
21 shall apply to the limited partnership.

22 § 8557. [Limitations on distribution.] Distributions and  
23 allocation of profits and losses.

24 [A partner may not receive a distribution from a limited  
25 partnership to the extent that, after giving effect to the  
26 distribution, all liabilities of the limited partnership, other  
27 than liabilities to partners on account of their partnership  
28 interests and liabilities as to which recourse of creditors is  
29 limited to specified property of the limited partnership, exceed  
30 the fair value of the partnership assets. The fair value of any

1 property that is subject to a liability as to which recourse of  
2 creditors is so limited shall be included in the partnership  
3 assets only to the extent that the fair value of the property  
4 exceeds that liability.] A limited partnership may from time to  
5 time make distributions and allocate the profits and losses of  
6 its business to the partners upon the basis stipulated in the  
7 partnership agreement or, if not stipulated in the partnership  
8 agreement, per capita. The allocation of losses pursuant to this  
9 section shall not affect the limitation on liability of limited  
10 partners as provided in section 8523 (relating to liability of  
11 limited partners to third parties).

12 § 8558. Liability upon return of contribution.

13 \* \* \*

14 (c) Determination of return of contribution.--A partner  
15 receives a return of his contribution to the extent that a  
16 distribution to him reduces his share of the fair value of the  
17 net assets of the limited partnership[, as determined under  
18 section 8557 (relating to limitations on distribution),] below  
19 the value (as stated or determined in the manner provided in the  
20 partnership agreement, if stated or provided for therein) of his  
21 contribution (to the extent it has been received by the limited  
22 partnership) that has not been distributed to him, and otherwise  
23 to the extent of the fair value of the distribution.

24 (d) Fair value of net assets.--For purposes of computing the  
25 fair value of the net assets of the limited partnership under  
26 subsection (c):

27 (1) liabilities of the limited partnership to partners  
28 on account of their partnership interests and liabilities as  
29 to which recourse of creditors is limited to specified  
30 property of the limited partnership shall not be considered;



1     and

2             (2) the fair value of property that is subject to a  
3     liability as to which recourse of creditors is so limited  
4     shall be included in the partnership assets only to the  
5     extent that the fair value of the property exceeds that  
6     liability.

7     § 8571. Nonjudicial dissolution.

8             (a) General rule.--A limited partnership is dissolved and  
9     its affairs shall be wound up upon the happening of the first to  
10    occur of the following:

11            (1) At the time or upon the happening of events  
12    specified in the certificate of limited partnership.

13            (2) At the time or upon the happening of events  
14    specified in writing in the partnership agreement.

15            (3) Written consent of all partners.

16            (4) An event of withdrawal of a general partner unless  
17    at the time there is at least one other general partner and  
18    the written provisions of the partnership agreement permit  
19    the business of the limited partnership to be carried on by  
20    the remaining general partner and that partner does so. The  
21    limited partnership is not dissolved and is not required to  
22    be wound up by reason of any event of withdrawal if, within  
23    180 days after the withdrawal, [all] a majority in interest,  
24    or such greater number as shall be provided in writing in the  
25    partnership agreement, of the partners agree in writing to  
26    continue the business of the limited partnership or to the  
27    appointment of one or more replacement general partners.

28            (5) Entry of an order of judicial dissolution under  
29    section 8572 (relating to judicial dissolution).

30     \* \* \*

1     (c) Dissolution by domestication.--Whenever a domestic  
2 limited partnership has domesticated itself under the laws of  
3 another jurisdiction by action similar to that provided by  
4 section 8590 (relating to domestication) and has authorized that  
5 action in the manner required by this subchapter for the  
6 approval of a proposal that the partnership dissolve  
7 voluntarily, the partnership may surrender its certificate of  
8 limited partnership under the laws of this Commonwealth by  
9 filing in the department a certificate of cancellation under  
10 section 8513 (relating to cancellation of certificate). If the  
11 partnership, as domesticated in the other jurisdiction,  
12 registers to do business in this Commonwealth either prior to or  
13 simultaneously with the filing of the certificate of  
14 cancellation under this subsection, the partnership shall not be  
15 required to file with the certificate of cancellation the tax  
16 clearance certificates that would otherwise be required by  
17 section 139 (relating to tax clearance of certain fundamental  
18 transactions).

19     ~~[(c)]~~ (d) Cross [references] reference.--See [sections 8103  
20 (relating to continuation of certain limited partnerships) and]  
21 section 8512(b) (relating to events requiring amendment).

22     § 8577. Proposal and adoption of plan of division.

23     \* \* \*

24     (b) Reference to outside facts.--Any of the terms of the  
25 plan may be made dependent upon facts ascertainable outside of  
26 the plan if the manner in which the facts will operate upon the  
27 terms of the plan is set forth in the plan. Such facts may  
28 include, without limitation, actions or events within the  
29 control of or determinations made by the dividing limited  
30 partnership or a representative of the dividing limited

1 partnership.

2 \* \* \*

3 (e) [Restrictions on certain distributions.--A plan of  
4 division may not be made effective if the effect of the plan is  
5 to make a distribution to the holders of any class or series of  
6 partnership interests of the dividing limited partnership unless  
7 the distribution is permitted by section 8557 (relating to  
8 limitations on distribution.] (Repealed).

9 (f) [Action by] Rights of holders of indebtedness.--[Unless  
10 otherwise provided by an indenture or other contract by which  
11 the dividing limited partnership is bound, a plan of division  
12 shall not require the approval of the holders of any debt  
13 securities or other obligations of the dividing limited  
14 partnership or of any representative of the holders if the  
15 transfer of assets effected by the division, if effected by  
16 means of a sale, lease, exchange or other disposition, and any  
17 related distribution would not require the approval of the  
18 holders or representatives thereof.] If any such debt  
19 securities, notes, similar evidences of indebtedness, indentures  
20 or other contracts were issued, incurred or executed by the  
21 dividing limited partnership before (the Legislative Reference  
22 Bureau shall insert here the effective date of the amendments of  
23 this section) and have not been amended subsequent to that date,  
24 the liability of the dividing limited partnership thereunder  
25 shall not be affected by the division nor shall the rights of  
26 the obligees thereunder be impaired by the division, and each of  
27 the resulting limited partnerships may be proceeded against or  
28 substituted in place of the dividing limited partnership as  
29 joint and several obligors on such liability, regardless of any  
30 provision of the plan of division apportioning the liabilities

1 of the dividing limited partnership.

2 \* \* \*

3 § 8580. Effect of division.

4 \* \* \*

5 (b) Property rights; allocations of assets and  
6 liabilities.--

7 (1) (i) All the property, real, personal and mixed, of  
8 the dividing limited partnership, and all debts due on  
9 whatever account to it, including subscriptions for  
10 partnership interests or other causes of action belonging  
11 to it, shall, except as otherwise provided in paragraph  
12 (2), to the extent [transfers] allocations of assets are  
13 contemplated by the plan of division, be deemed without  
14 further action to be [transferred] allocated to and  
15 vested in the resulting limited partnerships on such a  
16 manner and basis and with such effect as is specified in  
17 the plan, or per capita among the resulting limited  
18 partnerships, as tenants in common, if no specification  
19 is made in the plan, and the title to any real estate or  
20 interest therein vested in any of the limited  
21 partnerships shall not revert or be in any way impaired  
22 by reason of the division.

23 (ii) Upon the division becoming effective, the  
24 resulting limited partnerships shall each thenceforth be  
25 responsible as separate and distinct limited partnerships  
26 only for such liabilities as each limited partnership may  
27 undertake or incur in its own name but shall be liable  
28 for the liabilities of the dividing limited partnership  
29 in the manner and on the basis provided in subparagraphs  
30 (iv) and (v).

1 (iii) Liens upon the property of the dividing  
2 limited partnership shall not be impaired by the  
3 division.

4 (iv) [One] To the extent allocations of liabilities  
5 are contemplated by the plan of division, the liabilities  
6 of the dividing limited partnership shall be deemed  
7 without further action to be allocated to and become the  
8 liabilities of the resulting limited partnerships on such  
9 a manner and basis and with such effect as is specified  
10 in the plan; and one or more but less than all of the  
11 resulting limited partnerships shall be free of the  
12 liabilities of the dividing limited partnership to the  
13 extent, if any, specified in the plan [if no fraud of  
14 creditors or partners or violation of law shall be  
15 effected thereby and if all applicable provisions of law  
16 are complied with.], if in either case:

17 (A) no fraud of partners or violation of law  
18 shall be effected thereby; and

19 (B) the plan does not constitute a fraudulent  
20 transfer under 12 Pa.C.S. Ch. 51 (relating to  
21 fraudulent transfers).

22 (v) If the conditions in subparagraph (iv) for  
23 freeing one or more of the resulting limited partnerships  
24 from the liabilities of the dividing limited partnership,  
25 or for allocating some or all of the liabilities of the  
26 dividing limited partnership, are not satisfied, the  
27 liabilities of the dividing limited partnership as to  
28 which those conditions are not satisfied shall not be  
29 affected by the division nor shall the rights of  
30 creditors [thereof] thereunder or of any person dealing

1 with the limited partnership be impaired by the division,  
2 and any claim existing or action or proceeding pending by  
3 or against the limited partnership with respect to those  
4 liabilities may be prosecuted to judgment as if the  
5 division had not taken place, or the resulting limited  
6 partnerships may be proceeded against or substituted in  
7 [its] place of the dividing limited partnership as joint  
8 and several obligors on [such liability] those  
9 liabilities, regardless of any provision of the plan of  
10 division apportioning the liabilities of the dividing  
11 limited partnership.

12 (vi) The conditions in subparagraph (iv) for freeing  
13 one or more of the resulting limited partnerships from  
14 the liabilities of the dividing limited partnership and  
15 for allocating some or all of the liabilities of the  
16 dividing limited partnership shall be conclusively deemed  
17 to have been satisfied if the plan of division has been  
18 approved by the Pennsylvania Public Utility Commission in  
19 a final order issued after (the Legislative Reference  
20 Bureau shall insert here the effective date of the  
21 amendments of this section) that has become not subject  
22 to further appeal.

23 (2) (i) The [transfer] allocation of any fee or  
24 freehold interest or leasehold having a remaining term of  
25 30 years or more in any tract or parcel of real property  
26 situate in this Commonwealth owned by a dividing limited  
27 partnership (including property owned by a foreign  
28 limited partnership dividing solely under the law of  
29 another jurisdiction) to a new limited partnership  
30 resulting from the division shall not be effective until

one of the following documents is filed in the office for the recording of deeds of the county, or each of them, in which the tract or parcel is situated:

(A) A deed, lease or other instrument of confirmation describing the tract or parcel.

(B) A duly executed duplicate original copy of the certificate of division.

(C) A copy of the certificate of division certified by the Department of State.

(D) A declaration of acquisition setting forth the value of real estate holdings in the county of the limited partnership as an acquired company.

(ii) The provisions of 75 Pa.C.S. § 1114 (relating to transfer of vehicle by operation of law) shall not be applicable to [a transfer] an allocation of ownership of any motor vehicle, trailer or semitrailer [from a dividing limited partnership] to a new limited partnership under this section or under a similar law of any other jurisdiction, but any such [transfer] allocation shall be effective only upon compliance with the requirements of 75 Pa.C.S. § 1116 (relating to issuance of new certificate following transfer).

(3) It shall not be necessary for a plan of division to list each individual asset or liability of the dividing limited partnership to be allocated to a new limited partnership so long as those assets and liabilities are described in a reasonable and customary manner.

(4) Each new limited partnership shall hold any assets and liabilities allocated to it as the successor to the dividing limited partnership, and those assets and

1 liabilities shall not be deemed to have been assigned to the  
2 new limited partnership in any manner, whether directly or  
3 indirectly or by operation of law.

4 \* \* \*

5 (g) Conflict of laws.--It is the intent of the General  
6 Assembly that:

7 (1) The effect of a division of a domestic limited  
8 partnership shall be governed solely by the laws of this  
9 Commonwealth and any other jurisdiction under the laws of  
10 which any of the resulting limited partnerships is organized.

11 (2) The effect of a division on the assets and  
12 liabilities of the dividing limited partnership shall be  
13 governed solely by the laws of this Commonwealth and any  
14 other jurisdiction under the laws of which any of the  
15 resulting limited partnerships is organized.

16 (3) The validity of any allocations of assets or  
17 liabilities by a plan of division of a domestic limited  
18 partnership, regardless of whether or not any of the new  
19 limited partnerships is a foreign limited partnership, shall  
20 be governed solely by the laws of this Commonwealth.

21 (4) In addition to the express provisions of this  
22 subsection, this subchapter shall otherwise generally be  
23 granted the protection of full faith and credit under the  
24 Constitution of the United States.

25 § 8590. Domestication.

26 \* \* \*

27 (b) Certificate of domestication.--The certificate of  
28 domestication shall be executed by the limited partnership and  
29 shall set forth in the English language:

30 (1) The name of the limited partnership. If the name is



1 in a foreign language, it shall be set forth in Roman letters  
2 or characters or Arabic or Roman numerals. If the name is one  
3 that is rendered unavailable for use by any provision of  
4 section 8505 (relating to name), the limited partnership  
5 shall adopt, in accordance with any procedures for changing  
6 the name of the limited partnership that are applicable prior  
7 to the domestication of the limited partnership, and shall  
8 set forth in the certificate of domestication an available  
9 name.

10 \* \* \*

11 (c) Effect of domestication.--

12 (1) As a domestic limited partnership, the domesticated  
13 limited partnership shall no longer be a foreign limited  
14 partnership for the purposes of this chapter and shall [have]  
15 instead be a domestic limited partnership with all the powers  
16 and privileges and [be subject to] all the duties and  
17 limitations granted and imposed upon domestic limited  
18 partnerships. [The property, debts, liens, estates, taxes,  
19 penalties and public accounts due the Commonwealth shall  
20 continue to be vested in and imposed upon the limited  
21 partnership to the same extent as if it were the successor by  
22 merger of the domesticating limited partnership with and into  
23 a domestic limited partnership under Subchapter F (relating  
24 to merger and consolidation).] In all other respects, the  
25 domesticated limited partnership shall be deemed to be the  
26 same limited partnership as it was prior to the domestication  
27 without any change in or affect on its existence. Without  
28 limiting the generality of the previous sentence, the  
29 domestication shall not be deemed to have dissolved the  
30 limited partnership or to have affected in any way:

1           (i) the right and title of the limited partnership  
2           in and to its assets, property, franchises, estates and  
3           choses in action;

4           (ii) the liability of the limited partnership for  
5           its debts, obligations, penalties and public accounts due  
6           the Commonwealth;

7           (iii) any liens or other encumbrances on the  
8           property or assets of the limited partnership; or

9           (iv) any contract, license or other agreement to  
10          which the limited partnership is a party or under which  
11          it has any rights or obligations.

12          (2) The partnership interests in the domesticated  
13          limited partnership shall be unaffected by the domestication  
14          except to the extent, if any, reclassified in the certificate  
15          of domestication.

16   § 8903. Definitions and index of definitions.

17          (a) Definitions.--The following words and phrases when used  
18          in this chapter shall have the meanings given to them in this  
19          section unless the context clearly indicates otherwise:

20          \* \* \*

21          ["Department." The Department of State of the Commonwealth.]

22          \* \* \*

23          "Event of dissociation." An event that causes a person to  
24          cease to be a member of a limited liability company. See  
25          section [8971(a)(4)] 8971(4) (relating to dissolution).

26          \* \* \*

27          ["Licensed person." A natural person who is duly licensed or  
28          admitted to practice his profession by a court, department,  
29          board, commission or other agency of this Commonwealth or  
30          another jurisdiction to render a professional service that is or

will be rendered by the professional company of which he is or intends to become a manager, member, employee or agent.]

"Limited liability company," "domestic limited liability company" or "company." An association that is a limited liability company organized and existing under this chapter.

\* \* \*

"Operating agreement." Any [agreement of the members as to] rules or procedures adopted for the regulation and governance of the affairs of a limited liability company and the conduct of its business. [The operating agreement need not be in writing except where this chapter refers to a written provision of the operating agreement. The operating agreement may contain any provision for the regulation of the internal affairs of the company agreed to by the members, whether or not specifically authorized by or in contravention of this chapter, except where this chapter:

(1) refers only to a rule as set forth in the certificate of organization; or

(2) expressly provides that the operating agreement shall not relax or contravene any provision on a specified subject. See sections 8913(8) (relating to certificate of organization) and 8915 (relating to modification by agreement).]

\* \* \*

["Professional services." The term shall have the meaning specified in section 2902 (relating to definitions).]

\* \* \*

(b) Index of other definitions.--Other definitions applying to this chapter and the sections in which they appear are:

"Act" or "action." Section 102.

1 "Department." Section 102.

2 "Licensed person." Section 102.

3 "Professional services." Section 102.

4 SUBCHAPTER B

5 ORGANIZATION[; CERTIFICATE OF ORGANIZATION]

6 § 8915. Modification by agreement.

7 The provisions of this chapter are intended to permit a  
8 limited liability company to qualify for taxation as an entity  
9 that is not an association taxable as a corporation under the  
10 Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C. § 1  
11 et seq.). Notwithstanding the limitations in [the definition of  
12 "operating agreement" in section 8903 (relating to definitions)  
13 and the limitations in section] sections 8913(8) (relating to  
14 certificate of organization) and 8916(b) (relating to operating  
15 agreement), the certificate of organization and operating  
16 agreement may effect any change in the form of organization of  
17 the company, in addition to or in contravention of the  
18 provisions of this chapter, that may be necessary to accomplish  
19 that purpose.

20 § 8916. Operating agreement.

21 (a) General rule.--The operating agreement of a limited  
22 liability company need not be in writing except where this  
23 chapter refers to a written provision of the operating  
24 agreement. If a written operating agreement provides that it  
25 cannot be amended or modified except in writing, an oral  
26 agreement, amendment or modification shall not be enforceable.

27 (b) Freedom of contract.--An operating agreement may contain  
28 any provision for the regulation of the internal affairs of a  
29 limited liability company adopted by the members, whether or not  
30 specifically authorized by or in contravention of this chapter,

1 except where this chapter:

2 (1) refers only to a rule as set forth in the  
3 certificate of organization; or

4 (2) expressly provides that the operating agreement  
5 shall not relax or contravene any provision on a specified  
6 subject.

7 (c) Cross references.--See sections 8913(8) (relating to  
8 certificate of organization) and 8915 (relating to modification  
9 by agreement).

10 § 8922. Liability of members [and managers].

11 (a) General rule.--[Neither] Except as provided in  
12 subsection (e), the members of a limited liability company [nor  
13 the managers of a company managed by one or more managers are]  
14 shall not be liable, solely by reason of being a member [or a  
15 manager], under an order of a court or in any other manner for a  
16 debt, obligation or liability of the company of any kind or for  
17 the acts [or omissions] of any [other] member, manager, agent or  
18 employee of the company.

19 (b) Professional relationship unaffected.--Subsection (a)  
20 shall not afford members [and managers] of a professional  
21 company with greater immunity than is available to the officers,  
22 shareholders, employees or agents of a professional corporation.  
23 See section 2925 (relating to professional relationship  
24 retained).

25 \* \* \*

26 (d) Conflict of laws.--The personal liability of a member of  
27 a company to any person or in any action or proceeding for the  
28 debts, obligations or liabilities of the company or for the acts  
29 [or omissions] of other members, managers, employees or agents  
30 of the company shall be governed solely and exclusively by this

chapter and the laws of this Commonwealth. Whenever a conflict arises between the laws of this Commonwealth and the laws of any other state with regard to the liability of members of a company organized and existing under this chapter for the debts, obligations and liabilities of the company or for the acts [or omissions] of the other members, managers, employees or agents of the company, the laws of this Commonwealth shall govern in determining such liability.

(e) Expansion of liability.--The certificate of organization may provide that some or all of the members shall be liable for some or all of the debts, obligations and liabilities of the company to the extent and under the circumstances provided in the certificate.

(f) Medical professional liability.--A professional company shall be deemed to be a partnership for purposes of section 811 of the act of October 15, 1975 (P.L.390, No.111), known as the Health Care Services Malpractice Act.

~~[(e)]~~ (g) Cross reference.--See section 8904(b) (relating to rules for cases not provided for in this chapter).

§ 8924. Limited transferability of membership interest.

(a) General rule.--The interest of a member in a limited liability company constitutes the personal estate of the member and may be transferred or assigned as provided in writing in the operating agreement. Unless otherwise provided in writing in the operating agreement, if all of the other members of the company other than the member proposing to dispose of his interest do not approve of the proposed transfer or assignment by unanimous vote or written consent, which approval may be unreasonably withheld by any of the other members, the transferee of the interest of the member shall have no right to

1 participate in the management of the business and affairs of the  
2 company or to become a member. The transferee shall only be  
3 entitled to receive the distributions and the return of  
4 contributions to which that member would otherwise be entitled.

5 (b) Certificate of membership interest.--The certificate of  
6 organization may provide that a member's interest in a company  
7 may be evidenced by a certificate of membership interest issued  
8 by the company [and]. If such provision is made for the issuance  
9 of certificates of membership interest, the operating agreement  
10 may [also] provide for the assignment or transfer of any  
11 membership interest represented by such a certificate and make  
12 other provisions with respect to such certificates. [See 13  
13 Pa.C.S. § 8102 (relating to definitions and index of  
14 definitions).]

15 § 8932. Distributions and allocation of profits and losses.

16 A limited liability company may from time to time [divide]  
17 make distributions and allocate the profits and losses of its  
18 business [and distribute the same] to [and allocate any losses  
19 among] the members of the company upon the basis stipulated in  
20 the operating agreement or, if not stipulated in the operating  
21 agreement, per capita. The allocation of losses pursuant to this  
22 section shall not affect the limitation on liability of members  
23 as provided in section 8922 (relating to liability of members).

24 § 8942. Voting.

25 \* \* \*

26 (c) Exception.--An amendment of the certificate of  
27 organization that:

28 (1) restates without change all of the operative  
29 provisions of the certificate of organization as theretofore  
30 in effect;

1           (2) changes the name or registered office of the  
2 company; or

3           (3) accomplishes any combination of the foregoing  
4 purposes;

5 is not an amendment of the certificate of organization for the  
6 purposes of subsection (b). Unless otherwise provided in writing  
7 in the operating agreement, an amendment described in this  
8 subsection may be made by the affirmative vote of a majority of  
9 the managers or, in the case of a company that is not managed by  
10 one or more managers, of a majority of the members.

11       \* \* \*

12 § 8943. Duties of managers and members.

13       \* \* \*

14       (b) Companies with managers.--If the certificate of  
15 organization provides that the company shall be managed by one  
16 or more managers:

17           (1) [Unless otherwise provided in writing in the  
18 operating agreement, the provisions of Subchapter B of  
19 Chapter 17 (relating to officers, directors and  
20 shareholders)] Sections 1711 (relating to alternative  
21 provisions) through 1717 (relating to limitation on standing)  
22 shall be applicable to representatives of the company. A  
23 written provision of the operating agreement may increase,  
24 but not relax, the duties of representatives of the company  
25 to its members under those sections. For purposes of applying  
26 the provisions of those sections, references to the "articles  
27 of incorporation," "bylaws," "directors" and "shareholders"  
28 shall mean the certificate of organization, operating  
29 agreement, managers and members, respectively.

30           (2) A member who is not a manager shall have no duties



1 to the company or to the other members solely by reason of  
2 acting in his capacity as a member.

3 § 8944. [Classes of members.] Members.

4 (a) General rule.--A limited liability company may have one  
5 or more members.

6 (b) Classes of members.--An operating agreement may provide  
7 for:

8 (1) classes or groups of members having such relative  
9 rights, powers and duties as the operating agreement may  
10 provide;

11 (2) the future creation in the manner provided in the  
12 operating agreement of additional classes or groups of  
13 members having such relative rights, powers and duties as may  
14 from time to time be established, including rights, powers  
15 and duties senior to existing classes and groups of members;  
16 and

17 (3) the taking of an action, including, without  
18 limitation, amendment of the certificate of organization or  
19 operating agreement or creation of a class or group of  
20 interests in the limited liability company that was not  
21 previously outstanding, without the vote or approval of any  
22 member or class or group of members.

23 ~~[(b)]~~ (c) Class voting.--The operating agreement may grant  
24 to all or certain identified members or a specified class or  
25 group of members the right to vote (on a per capita or other  
26 basis), separately or with all or any class or group of members,  
27 upon any matter.

28 § 8945. Indemnification.

29 \* \* \*

30 (f) Mandatory indemnification.--Without regard to whether

1 indemnification or advancement of expenses is provided under  
2 subsections (a) and (d), a limited liability company shall be  
3 subject to section 8331(2) (relating to rules determining rights  
4 and duties of partners) and both the members and the managers,  
5 if any, shall be deemed to be general partners for purposes of  
6 applying that section.

7 § 8948. [Dissociation of member limited.] Limitation on  
8 dissociation or assignment of membership interest.

9 Notwithstanding anything to the contrary set forth in this  
10 part, an operating agreement may provide that a member may not  
11 voluntarily dissociate from the limited liability company or  
12 assign his membership interest prior to the dissolution and  
13 winding-up of the company, and an attempt by a member to  
14 dissociate voluntarily from the company or to assign his  
15 membership interest in violation of the operating agreement  
16 shall be ineffective.

17 § 8957. Approval of merger or consolidation.

18 \* \* \*

19 (b) Reference to outside facts.--Any of the terms of the  
20 plan may be made dependent upon facts ascertainable outside of  
21 the plan if the manner in which the facts will operate upon the  
22 terms of the plan is set forth in the plan. Such facts may  
23 include, without limitation, actions or events within the  
24 control of or determinations made by a party to the plan or a  
25 representative of a party to the plan.

26 (c) [Postadoption] Post-adoption amendment of plan of merger  
27 or consolidation.--A plan of merger or consolidation may contain  
28 a provision that the managers, if any, of the constituent  
29 companies may amend the plan at any time prior to its effective  
30 date, except that an amendment made subsequent to any adoption

1 of the plan by the members of any constituent domestic company  
2 shall not, without the approval of the members, change:

3 (1) The amount or kind of membership interests,  
4 obligations, cash, property or rights to be received in  
5 exchange for or on conversion of all or any of the membership  
6 interests of the constituent domestic company adversely to  
7 the holders of those membership interests.

8 (2) Any [term] provision of the certificate of  
9 organization or operating agreement of the surviving or new  
10 company [to be effected by] as it is to be in effect  
11 immediately following consummation of the merger or  
12 consolidation except provisions that may be amended without  
13 the approval of the members.

14 (3) Any of the other terms and conditions of the plan if  
15 the change would adversely affect the holders of any  
16 membership interests of the constituent domestic company.

17 \* \* \*

18 (e) Party to plan.--An association that approves a plan in  
19 its capacity as a member or creditor of a merging or  
20 consolidating company or that furnishes all or a part of the  
21 consideration contemplated by a plan does not thereby become a  
22 party to the [plan or the] merger or consolidation for the  
23 purposes of this subchapter.

24 \* \* \*

25 (i) Termination of plan.--Prior to the time when a merger or  
26 consolidation becomes effective, the merger or consolidation may  
27 be terminated pursuant to provisions therefor, if any, set forth  
28 in the plan. If a certificate of merger or consolidation has  
29 been filed in the department prior to the termination, a  
30 certificate of termination executed by each company that is a

1 party to the merger or consolidation, unless the plan permits  
2 termination by less than all of the companies, in which case the  
3 certificate shall be executed on behalf of the company  
4 exercising the right to terminate, shall be filed in the  
5 department. The certificate of termination shall set forth:

6 (1) A copy of the certificate of merger or consolidation  
7 relating to the plan that is terminated.

8 (2) A statement that the plan has been terminated in  
9 accordance with the provisions therefor set forth therein.

10 See sections 134 (relating to docketing statement), 135  
11 (relating to requirements to be met by filed documents), 138  
12 (relating to statement of correction) and 8907 (relating to  
13 execution of documents).

14 \* \* \*

15 § 8962. Proposal and adoption of plan of division.

16 \* \* \*

17 (b) Reference to outside facts.--Any of the terms of the  
18 plan may be made dependent upon facts ascertainable outside of  
19 the plan if the manner in which the facts will operate upon the  
20 terms of the plan is set forth in the plan. Such facts may  
21 include, without limitation, actions or events within the  
22 control of or determinations made by the dividing limited  
23 liability company or a representative of the dividing limited  
24 liability company.

25 \* \* \*

26 (e) [Action by holders of indebtedness.--Unless otherwise  
27 provided by an indenture or other contract by which the dividing  
28 limited liability company is bound, a plan of division shall not  
29 require the approval of the holders of any debt securities or  
30 other obligations of the dividing company or of any

1 representative of the holders if the transfer of assets effected  
2 by the division, if effected by means of a sale, lease, exchange  
3 or other disposition, and any related distribution would not  
4 require the approval of the holders or representatives thereof.]  
5 (Repealed).

6 § 8965. Effect of division.

7 \* \* \*

8 (b) Property rights; allocations of assets and  
9 liabilities.--

10 (1) (i) All the property, real, personal and mixed, of  
11 the dividing company and all debts due on whatever  
12 account to it, including subscriptions for membership  
13 interests and other causes of action belonging to it,  
14 shall, except as otherwise provided in paragraph (2), to  
15 the extent [transfers] allocations of assets are  
16 contemplated by the plan of division, be deemed without  
17 further action to be [transferred] allocated to and  
18 vested in the resulting companies on such a manner and  
19 basis and with such effect as is specified in the plan,  
20 or per capita among the resulting companies as tenants in  
21 common if no specification is made in the plan, and the  
22 title to any real estate or interest therein vested in  
23 any of the companies shall not revert or be in any way  
24 impaired by reason of the division.

25 (ii) Upon the division becoming effective, the  
26 resulting companies shall each thenceforth be responsible  
27 as separate and distinct companies only for such  
28 liabilities as each company may undertake or incur in its  
29 own name but shall be liable for the liabilities of the  
30 dividing company in the manner and on the basis provided

1 in subparagraphs (iv) and (v).

2 (iii) Liens upon the property of the dividing  
3 company shall not be impaired by the division.

4 (iv) [One] To the extent allocations of liabilities  
5 are contemplated by the plan of division, the liabilities  
6 of the dividing company shall be deemed without further  
7 action to be allocated to and become the liabilities of  
8 the resulting companies on such a manner and basis and  
9 with such effect as is specified in the plan; and one or  
10 more, but less than all, of the resulting companies shall  
11 be free of the liabilities of the dividing company to the  
12 extent, if any, specified in the plan [if no fraud of  
13 creditors or members or violation of law shall be  
14 effected thereby and if all applicable provisions of law  
15 are complied with.], if in either case:

16 (A) no fraud on members or violation of law  
17 shall be effected thereby; and

18 (B) the plan does not constitute a fraudulent  
19 transfer under 12 Pa.C.S. Ch. 51 (relating to  
20 fraudulent transfers).

21 (v) If the conditions in subparagraph (iv) for  
22 freeing one or more of the resulting companies from the  
23 liabilities of the dividing company, or for allocating  
24 some or all of the liabilities of the dividing company,  
25 are not satisfied, the liabilities of the dividing  
26 company as to which those conditions are not satisfied  
27 shall not be affected by the division nor shall the  
28 rights of creditors [thereof] thereunder or of any person  
29 dealing with the company be impaired by the division, and  
30 any claim existing or action or proceeding pending by or

1       against the company with respect to those liabilities may  
2       be prosecuted to judgment as if the division had not  
3       taken place, or the resulting companies may be proceeded  
4       against or substituted in [its] place of the dividing  
5       company as joint and several obligors on [such liability]  
6       those liabilities, regardless of any provision of the  
7       plan of division apportioning the liabilities of the  
8       dividing company.

9       (vi) The conditions in subparagraph (iv) for freeing  
10      one or more of the resulting companies from the  
11      liabilities of the dividing company and for allocating  
12      some or all of the liabilities of the dividing company  
13      shall be conclusively deemed to have been satisfied if  
14      the plan of division has been approved by the  
15      Pennsylvania Public Utility Commission in a final order  
16      issued after (the Legislative Reference Bureau shall  
17      insert here the effective date of the amendments of this  
18      section) that has become not subject to further appeal.

19      (2) (i) The [transfer] allocation of any fee or  
20      freehold interest or leasehold having a remaining term of  
21      30 years or more in any tract or parcel of real property  
22      situate in this Commonwealth owned by a dividing company  
23      (including property owned by a foreign limited liability  
24      company dividing solely under the law of another  
25      jurisdiction) to a new company resulting from the  
26      division shall not be effective until one of the  
27      following documents is filed in the office for the  
28      recording of deeds of the county, or each of them, in  
29      which the tract or parcel is situated:

30              (A) A deed, lease or other instrument of

confirmation describing the tract or parcel.

(B) A duly executed duplicate original copy of the certificate of division.

(C) A copy of the certificate of division certified by the Department of State.

(D) A declaration of acquisition setting forth the value of real estate holdings in such county of the company as an acquired company.

(ii) The provisions of 75 Pa.C.S. § 1114 (relating to transfer of vehicle by operation of law) shall not be applicable to [a transfer] an allocation of ownership of any motor vehicle, trailer or semitrailer [from a dividing company] to a new company under this section or under a similar law of any other jurisdiction but any such [transfer] allocation shall be effective only upon compliance with the requirements of 75 Pa.C.S. § 1116 (relating to issuance of new certificate following transfer).

(3) It shall not be necessary for a plan of division to list each individual asset or liability of the dividing company to be allocated to a new company so long as those assets and liabilities are described in a reasonable and customary manner.

(4) Each new company shall hold any assets and liabilities allocated to it as the successor to the dividing company, and those assets and liabilities shall not be deemed to have been assigned to the new company in any manner, whether directly or indirectly or by operation of law.

\* \* \*

(h) Conflict of laws.--It is the intent of the General



1 Assembly that:

2       (1) The effect of a division of a domestic limited  
3 liability company shall be governed by the laws of this  
4 Commonwealth and any other jurisdiction under the laws of  
5 which any of the resulting companies is organized.

6       (2) The effect of a division on the assets and  
7 liabilities of the dividing company shall be governed solely  
8 by the laws of this Commonwealth and any other jurisdiction  
9 under the laws of which any of the resulting companies is  
10 organized.

11       (3) The validity of any allocation of assets or  
12 liabilities by a plan of division of a domestic limited  
13 liability company, regardless of whether or not any of the  
14 new companies is a foreign limited liability company, shall  
15 be governed solely by the laws of this Commonwealth.

16       (4) In addition to the express provisions of this  
17 subsection, this subchapter shall otherwise generally be  
18 granted the protection of full faith and credit under the  
19 Constitution of the United States.

20 § 8971. Dissolution.

21       [(a) General rule.--]A limited liability company is  
22 dissolved and its affairs shall be wound up upon the happening  
23 of the first to occur of the following events:

24       (1) At the time or upon the happening of events  
25 specified in the certificate of organization.

26       (2) At the time or upon the happening of events  
27 specified in writing in the operating agreement.

28       (3) By the unanimous written agreement or consent of all  
29 members.

30       (4) [Upon] Except as otherwise provided in writing in

1 the operating agreement, upon a member becoming a bankrupt or  
2 executing an assignment for the benefit of creditors or the  
3 death, retirement, insanity, resignation, expulsion or  
4 dissolution of a member or the occurrence of any other event  
5 that terminates the continued membership of a member in the  
6 company unless the business of the company is continued by  
7 the vote or consent of [all] a majority in interest, or such  
8 greater number as shall be provided in writing in the  
9 operating agreement, of the remaining members given within  
10 [90] 180 days following such event [or under a right to do so  
11 stated in the operating agreement].

12 (5) Entry of an order of judicial dissolution under  
13 section 8972 (relating to judicial dissolution).

14 [(b) Cross reference.--See section 8103 (relating to  
15 continuation of certain limited partnerships and limited  
16 liability companies).]

17 § 8974. Distribution of assets upon dissolution.

18 (a) General rule.--In settling accounts after dissolution,  
19 the liabilities of the limited liability company shall be  
20 entitled to payment in the following order:

21 (1) Those to creditors, including members or managers  
22 who are creditors, in the order of priority as provided by  
23 law, in satisfaction of the liabilities of the company,  
24 whether by payment or the making of reasonable provision for  
25 payment thereof, other than liabilities for distributions to  
26 members under section 8932 (relating to distributions and  
27 allocation of profits and losses) or 8933 (relating to  
28 distributions upon an event of dissociation).

29 (2) Unless otherwise provided in the operating  
30 agreement, to members and former members in satisfaction of

1 liabilities for distributions under section 8932 or 8933.

2 (3) Unless otherwise provided in the operating  
3 agreement, to members in respect of:

4 (i) Their contributions to capital.

5 (ii) Their share of the profits and other  
6 compensation by way of income on their contributions.

7 \* \* \*

8 § 8978. Dissolution by domestication.

9 Whenever a domestic limited liability company has  
10 domesticated itself under the laws of another jurisdiction by  
11 action similar to that provided by section 8982 (relating to  
12 domestication) and has authorized that action by the vote  
13 required by this subchapter for the approval of a proposal that  
14 the company dissolve voluntarily, the company may surrender its  
15 certificate of organization under the laws of this Commonwealth  
16 by filing in the Department of State a certificate of  
17 dissolution under section 8975 (relating to certificate of  
18 dissolution). In lieu of the statements required by section  
19 8975(a)(2) through (4), the certificate of dissolution shall set  
20 forth a statement that the company has domesticated itself under  
21 the laws of another jurisdiction. If the company, as  
22 domesticated in the other jurisdiction, registers to do business  
23 in this Commonwealth either prior to or simultaneously with the  
24 filing of the certificate of dissolution under this section, the  
25 company shall not be required to file with the certificate of  
26 dissolution the tax clearance certificates that would otherwise  
27 be required by section 139 (relating to tax clearance of certain  
28 fundamental transactions).

29 § 8982. Domestication.

30 \* \* \*

(b) Certificate of domestication.--The certificate of domestication shall be executed by the company and shall set forth in the English language:

(1) The name of the company. If the name is in a foreign language, it shall be set forth in Roman letters or characters or Arabic or Roman numerals. If the name is one that is rendered unavailable for use by any provision of section 8905 (relating to name), the company shall adopt, in accordance with any procedures for changing the name of the company that are applicable prior to the domestication of the company, and shall set forth in the certificate of domestication, an available name.

\* \* \*

(c) Effect of domestication.--

(1) As a domestic limited liability company, the domesticated company shall no longer be a foreign limited liability company for the purposes of this chapter and shall [have] instead be a domestic limited liability company with all the powers and privileges and [be subject to] all the duties and limitations granted and imposed upon domestic limited liability companies. [The property, debts, liens, estates, taxes, penalties and public accounts due the Commonwealth shall continue to be vested in and imposed upon the company to the same extent as if it were the successor by merger of the domesticating company with and into a domestic limited liability company under Subchapter G (relating to mergers and consolidations).] In all other respects, the domesticated limited liability company shall be deemed to be the same limited liability company as it was prior to the domestication without any change in or affect on its

1 existence. Without limiting the generality of the previous  
2 sentence, the domestication shall not be deemed to have  
3 dissolved the company or to have affected in any way:

4 (i) the right and title of the company in and to its  
5 assets, property, franchises, estates and choses in  
6 action;

7 (ii) the liability of the company for its debts,  
8 obligations, penalties and public accounts due the  
9 Commonwealth;

10 (iii) any liens or other encumbrances on the  
11 property or assets of the company; or

12 (iv) any contract, license or other agreement to  
13 which the company is a party or under which it has any  
14 rights or obligations.

15 (2) The [shares of] membership interests in the  
16 domesticated company shall be unaffected by the domestication  
17 except to the extent, if any, reclassified in the certificate  
18 of domestication.

19 § 8996. Restrictions.

20 \* \* \*

21 (b) Ownership and governance of restricted professional  
22 companies.--Except as otherwise provided by a statute, rule or  
23 regulation applicable to a particular profession, all of the  
24 [members] ultimate beneficial owners of membership interests in  
25 and all of the managers, if any, of a restricted professional  
26 company shall be licensed persons.

27 \* \* \*

28 (d) Application.--For purposes of applying subsection (a):

29 \* \* \*

30 (3) The practice of the restricted professional service

of law shall be deemed to include:

(i) serving as an attorney-in-fact, guardian, custodian, executor, personal representative, trustee or fiduciary;

(ii) serving as a director or trustee of a corporation for profit or not-for-profit, manager of a limited liability company or a similar position with any other form of association;

(iii) testifying, teaching, lecturing or writing about any topic related to the law;

(iv) serving as a master, receiver, arbitrator or similar official;

(v) providing actuarial, insurance, investment, estate and trust administration, tax return preparation, financial and other similar services and advice;

(vi) conducting intellectual property and other real and personal property title searches and providing other title insurance agency services; and

(vii) engaging in any activity incidental to any of the foregoing.

§ 8998. Annual registration.

\* \* \*

(f) Annual fee to be lien.--

(1) Failure to [pay the annual registration fee imposed] file the certificate of annual registration required by this section shall not affect the existence or status of the restricted professional company as such, but the annual registration fee that would have been payable shall be a lien in the manner provided in this subsection from the time the annual registration fee is due and payable [upon]. If a

1 certificate of annual registration is not filed within 30  
2 days after the date on which it is due, the department shall  
3 assess a penalty of \$500 against the company, which shall  
4 also be a lien in the manner provided in this subsection. The  
5 imposition of that penalty shall not be construed to relieve  
6 the company from liability for any other penalty or interest  
7 provided for under other applicable law.

8 (2) If the annual registration fee paid by a restricted  
9 professional company is subsequently determined to be less  
10 than should have been paid because it was based on an  
11 incorrect number of members or was otherwise incorrectly  
12 computed, that fact shall not affect the existence or status  
13 of the restricted professional company as such, but the  
14 amount of the additional annual registration fee that should  
15 have been paid shall be a lien in the manner provided in this  
16 subsection from the time the incorrect payment is discovered  
17 by the department.

18 (3) The annual registration fee shall bear simple  
19 interest from the date that it becomes due and payable until  
20 paid. The interest rate shall be that provided for in section  
21 806 of the act of April 9, 1929 (P.L.343, No.176), known as  
22 The Fiscal Code, with respect to unpaid taxes. The penalty  
23 provided for in paragraph (1) shall not bear interest. The  
24 payment of interest shall not relieve the restricted  
25 professional company from liability for any other penalty or  
26 interest provided for under other applicable law.

27 (4) The lien created by this subsection shall attach to  
28 all of the property and proceeds thereof of the restricted  
29 professional company in which a security interest can be  
30 perfected, in whole or in part, by filing in the department

1 under 13 Pa.C.S. Div. 9 (relating to secured transactions;  
2 sales of accounts, contract rights and chattel paper),  
3 whether the property and proceeds are owned by the company at  
4 the time the annual registration fee or any penalty or  
5 interest becomes due and payable or whether the property and  
6 proceeds are acquired thereafter. Except as otherwise  
7 provided by statute, the lien created by this subsection  
8 shall have priority over all other liens, security interests  
9 or other charges, except liens for taxes or other charges due  
10 the Commonwealth. The lien created by this subsection shall  
11 be entered on the records of the department and indexed in  
12 the same manner as a financing statement filed under 13  
13 Pa.C.S. Div. 9. At the time an annual registration fee,  
14 penalty or interest that has resulted in the creation of  
15 [the] a lien under this subsection is paid, the department  
16 shall terminate the lien with respect to that annual  
17 registration fee, penalty or interest without requiring a  
18 separate filing by the company for that purpose.

19 (5) If the annual registration fee paid by a restricted  
20 professional company is subsequently determined to be more  
21 than should have been paid for any reason, no refund of the  
22 additional fee shall be made.

23 \* \* \*

24 § 9502. Creation, status and termination of business trusts.

25 (a) Creation.--A business trust may be created in real or  
26 personal property, or both, with power in the trustee [or a  
27 majority of the trustees]:

28 (1) To receive title to, hold, buy, sell, exchange,  
29 transfer and convey real and personal property for the use of  
30 the business trust.



1           (2) To take, receive, invest or disburse the receipts,  
2 earnings, rents, profits or returns from the trust estate.

3           (3) To carry on and conduct any lawful business  
4 designated in the deed or other instrument of trust, and  
5 generally to do any lawful act in relation to such trust  
6 property that any individual owning the same absolutely might  
7 do.

8           (4) To merge with another business trust or other  
9 association, to divide or to engage in any other fundamental  
10 or other transaction contemplated by the deed or other  
11 instrument of trust.

12       (b) Term.--Except as otherwise provided in the instrument, a  
13 business trust shall have perpetual existence.

14       (c) Separate entity.--A business trust is a separate legal  
15 entity. Except as otherwise provided in the instrument, title to  
16 real and personal property may be held in the name of the trust,  
17 without in any manner diminishing the rights, powers and duties  
18 of the trustees as provided in subsection (a).

19       (d) Termination.--Except as otherwise provided in the  
20 instrument:

21           (1) The business trust may not be terminated, dissolved  
22 or revoked by a beneficial owner or other person.

23           (2) The death, incapacity, dissolution, termination or  
24 bankruptcy of a beneficial owner or a trustee shall not  
25 result in the termination, dissolution or revocation of the  
26 business trust.

27       (e) Contents of instrument.--The instrument may contain any  
28 provision for the regulation of the internal affairs of the  
29 business trust included in the instrument by the settlor, the  
30 trustee or the beneficiaries in accordance with the applicable

1 procedures for the adoption or amendment of the instrument.

2 § 9503. Documentation of trust.

3 (a) General rule.--A business trust shall not be valid  
4 unless created by deed of trust or other written instrument  
5 subscribed by one or more individuals, associations or other  
6 entities. The trustees of a business trust shall promptly cause  
7 the instrument or any amendment thereof, except an amendment  
8 solely effecting or reflecting the substitution of or other  
9 change in the trustees, to be filed in the Department of State.  
10 [The failure to effect the filing shall not affect the validity  
11 of a business trust. A trustee who violates the requirements of  
12 this subsection shall be liable for a civil penalty in the  
13 amount of \$1,000 payable to the department.]

14 \* \* \*

15 § 9505. [Succession of trustees.] Trustees.

16 (a) Succession of trustees.--An instrument may provide for  
17 the succession of title to [the] any trust property not titled  
18 in the name of the trust to a successor trustee, in case of the  
19 death, resignation, removal or incapacity of any trustee. In the  
20 case of any such succession, the title to [the] such trust  
21 property shall at once vest in the succeeding trustee.

22 (b) Nature of service.--Service as the trustee of a business  
23 trust by an association that is not a banking institution shall  
24 not be deemed to constitute acting as a fiduciary for purposes  
25 of the act of November 30, 1965 (P.L.847, No.356), known as the  
26 Banking Code of 1965.

27 § 9506. Liability of trustees and beneficiaries.

28 (a) General rule.--[Liability to third parties for any act,  
29 omission or obligation of a trustee of a business trust when  
30 acting in such capacity shall extend to so much of the trust

1 estate as may be necessary to discharge such liability, but  
2 personal liability shall not attach to the trustee or the  
3 beneficiaries of the trust for any such act, omission or  
4 liability.]

5 (1) Except as otherwise provided in the instrument, the  
6 beneficiaries of a business trust shall be entitled to the  
7 same limitation of personal liability as is extended to  
8 shareholders in a domestic business corporation.

9 (2) Except as otherwise provided in the instrument, the  
10 trustees of a trust, when acting in that capacity, shall not  
11 be personally liable to any person other than the trust or a  
12 beneficiary for any act or obligation of the trust or any  
13 trustee.

14 (3) An obligation of a trust based upon a writing may be  
15 limited to a specific fund or other identified pool or group  
16 of assets of the trust.

17 \* \* \*

18 (f) Permissible beneficiaries.--Except as otherwise provided  
19 by a statute, rule or regulation applicable to a particular  
20 profession, all of the [beneficiaries of] ultimate beneficial  
21 owners of interests in a business trust that renders one or more  
22 restricted professional services shall be licensed persons. As  
23 used in this subsection, the term "restricted professional  
24 services" shall have the meaning specified in section 8903  
25 (relating to definitions and index of definitions).

26 \* \* \*

27 (h) Medical professional liability.--A business trust shall  
28 be deemed to be a professional corporation for purposes of  
29 section 811 of the act of October 15, 1975 (P.L.390, No.111),  
30 known as the Health Care Services Malpractice Act.

1 Section 3. Amendment of Title 54.

2 As much of Title 54 as is hereinafter set forth is amended or  
3 added to read:

4 § 302. Definitions.

5 The following words and phrases when used in this chapter  
6 shall have, unless the context clearly indicates otherwise, the  
7 meanings given to them in this section:

8 "Business." Any commercial or professional activity.

9 "Entity." Any individual[, ] or any corporation, association,  
10 partnership, joint-stock company, business trust, syndicate,  
11 joint adventureship or other combination or group of persons,  
12 regardless of whether it is organized or formed under the laws  
13 of this Commonwealth or any other jurisdiction.

14 "Fictitious name." Any assumed or fictitious name, style or  
15 designation other than the proper name of the entity using such  
16 name. The term includes [the], without limitation, any name [of  
17 any association,] assumed by any general partnership, [business  
18 trust,] syndicate, joint adventureship or similar combination or  
19 group of persons.

20 "Proper name." When used with respect to an entity of a type  
21 listed in the following paragraphs, the term means the name set  
22 forth in:

23 (1) the articles of incorporation, if it is a  
24 corporation;

25 (2) the statement of registration, if it is a limited  
26 liability partnership;

27 (3) the certificate of limited partnership, if it is a  
28 limited partnership;

29 (4) the statement of election, if it is an electing  
30 partnership;

1       (5) the certificate of organization, if it is a limited  
2       liability company;

3       (6) the articles of association, if it is a professional  
4       association;

5       (7) the deed of trust or other instrument, if it is a  
6       business trust; or

7       (8) a publicly filed document of a type listed in any of  
8       the foregoing paragraphs even though the document is referred  
9       to by a different title under the laws of any other  
10       jurisdiction.

11 § 303. Scope of chapter.

12       \* \* \*

13       (b) Mandatory registration.--

14       \* \* \*

15       (2) Paragraph (1) shall not apply to any:

16           (i) Nonprofit or professional activities.

17           (ii) Activities [which] that are expressly or  
18       impliedly prohibited by law from being carried on under a  
19       fictitious name.

20           (iii) [Limited partnership which is registered in  
21       the department pursuant to 15 Pa.C.S. Ch. 85 (relating to  
22       limited partnerships) or under corresponding provisions  
23       of prior law. The preceding sentence shall not apply to  
24       any entity which includes the limited partnership as a  
25       participant unless the entity is itself such a limited  
26       partnership.] (Repealed).

27           (iv) Unincorporated nonprofit association.

28           (v) [Electing partnership existing under 15 Pa.C.S.  
29       Ch. 87 (relating to electing partnerships).] (Repealed).

30           (vi) [Limited liability company which is registered

1 in the department pursuant to 15 Pa.C.S. Ch. 89 (relating  
2 to limited liability companies).] (Repealed).

3 (vii) [Registered limited liability partnership  
4 which is registered in the department pursuant to 15  
5 Pa.C.S. Ch. 82 (relating to registered limited liability  
6 partnerships).] (Repealed).

7 (viii) [Business trust which is registered in the  
8 department pursuant to 15 Pa.C.S. Ch. 95 (relating to  
9 business trusts).] (Repealed).

10 \* \* \*

11 § 311. Registration.

12 \* \* \*

13 (e) Duplicate use of names.--The fictitious name shall not  
14 be the same as or confusingly similar to:

15 (1) The name of any domestic corporation, or any foreign  
16 corporation authorized to do business in this Commonwealth,  
17 or the name of any corporation or other association  
18 registered at any time under Chapter 5 (relating to corporate  
19 and other association names) unless such name is available or  
20 is made available for use under the provisions or procedures  
21 of 15 Pa.C.S. § [5303(b)(1)(i) or (ii)] 5303(b)(1) (relating  
22 to duplicate use of names) or the equivalent.

23 (2) [The name of any limited partnership organized under  
24 15 Pa.C.S. Ch. 85 (relating to limited partnerships).]  
25 (Repealed).

26 (3) The name of any administrative department, board or  
27 commission or other agency of this Commonwealth.

28 (4) A name the exclusive right to which is at the time  
29 reserved by any other person whatsoever in the manner  
30 provided by statute.

1       \* \* \*

2   § 502.   Certain additions to register.

3       \* \* \*

4       (c)   Limitation on names which may be registered.--

5   Notwithstanding subsections (a) and (b), no new name shall be  
6   registered or deemed to be registered under this section [which  
7   is the same as or confusingly similar to] that is not  
8   distinguishable upon the records of the department from any  
9   other name then registered or deemed to be registered under this  
10  chapter, without the consent of the senior registrant.

11       \* \* \*

12  Section 4.   Repeals.

13       The following acts and parts of acts are repealed:

14       As much as reads ", and act as the attorney-in-fact and  
15   authorized agent of such corporations for the service of process  
16   thereon" in section 806 of the act of April 9, 1929 (P.L.177,  
17   No.175), known as The Administrative Code of 1929.

18       Section 404(b) of the act of December 19, 1990 (P.L.834,  
19   No.198), known as the GAA Amendments Act of 1990, insofar as it  
20   applies to 15 Pa.C.S. §§ 1745 and 5745.

21       15 Pa.C.S. §§ 5543.1, 5546.1, 5764.1, 8103 and 8206.

22  Section 5.   Effective date.

23       This act shall take effect in 60 days.